



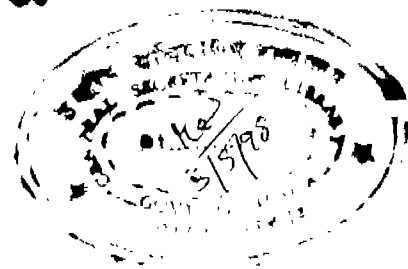
# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 2  
PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग-संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 14th August, 1997:—

BILL No. XLIX OF 1997

*A Bill to consolidate and amend the law relating to companies and certain other associations.*

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

### PART I

#### PRELIMINARY

1. (1) This Act may be called the Companies Act, 1997.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint.

Short title,  
extent and  
commence-  
ment.

definitions.

2. In this Act, unless the context otherwise requires,—

(1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;

(2) "accounting standards" means the standards of accounting, recommended by the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949, as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 415; 38 of 1949.

(3) "alter" and "alteration" shall include the making of additions and omissions;

(4) "articles" means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act;

(5) "auditor" means an auditor appointed under section 180;

(6) "banking company" has the same meaning as in the Banking Regulation Act, 1949; 10 of 1949.

(7) "Board" means the Board of directors of a company;

(8) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—

(a) a corporation sole;

(b) a co-operative society registered under any law relating to co-operative societies; and

(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification, specify in this behalf;

(9) "book and paper" and "book or paper" includes accounts, deeds, vouchers, writings and documents, maintained in any medium capable of being retrieved by any electronic means, or in any other manner;

(10) "branch office", in relation to a company, means—

(a) any establishment described as a branch by the company; or

(b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or

(c) any establishment engaged in any production, processing or manufacture;

(11) "charge" means an interest created on the property of a company or its undertaking or both, as a security, and includes—

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on the uncalled share capital of the company;

(c) a charge on any immovable property, wherever situate, or any interest therein;

(d) a charge on any book debts of the company;

(e) a charge on any movable property of the company;

(f) a floating charge on the undertaking or any property of the company, including stock-in-trade;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent or on a trade mark or a licence under a trade mark, or on a copyright or a licence under a copyright, and

(j) a mortgage;

38 of 1949. (12) "chartered accountant" means a member of the Institute of Chartered Accounts of India, constituted under the Chartered Accounts Act, 1949;

(13) "chief accounts officer" means the chief accounts officer of a company appointed under section 172, by whatever name called;

(14) "company" means a company as defined in section 3;

23 of 1959. (15) "cost accountant" means a member of the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959;

(16) "Court", with reference to any matter relating to a company, means the High Court having jurisdiction in relation to the place at which the registered office of the company is situate;

(17) "debenture" includes debenture stock, bonds and such other securities of a company, whether constituting a charge on the assets of the company or not;

22 of 1996.25 (18) "depository" has the same meaning as in the Depositories Act, 1996;

(19) "derivative" includes a security derived from a debt instrument, share, loan whether secured or unsecured, risk instrument, option, future or contract for differences or any other form of security;

(20) "director" means an individual appointed as a director of a Board of a company under section 208 and includes any person occupying the position of a director, by whatever name called;

(21) "Director General" means the Director General of Inspection and Investigation appointed under sub-section (1) of section 402;

(22) "dividend" includes any interim dividend;

(23) "document" includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act whether maintained in any medium capable of being retrieved by any electronic means or in any other manner;

(24) "employees' stock option" means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price;

(25) "existing company" means an existing company as defined in section 3;

(26) "financial year", in relation to any body corporate, means the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not;

(27) "Government company" means any company in which more than fifty per cent. of the paid-up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company;

(28) "holding company" means a holding company within the meaning of section 4;

(29) "hybrid" means any security which has the character of more than one type of security, including their derivatives;

(30) "information memorandum" means a process undertaken prior to the filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed, by means of a notice, circular, advertisement or document;

(31) "insurance company" means a company which carries on the business of insurance either solely or in conjunction with any other business or businesses;

(32) "issued generally", in relation to a prospectus, an abridged prospectus, or any other like document, means issued to persons irrespective of their being existing members or debenture holders of the body corporate to which the prospectus, abridged prospectus or such other document relates;

(33) "licensed Registrar" means a company which has been authorised to perform the functions of the Registrar under section 406;

(34) "limited company" means a company limited by shares or by guarantee;

(35) "listed public company" means a public company which has any of its securities listed in any recognised stock exchange;

(36) "manager" means an individual who, subject to the superintendence, control and direction of the Board, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not;

(37) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board, is entrusted with substantial powers of management of the company, which would not otherwise be exercisable by him, and who shall exercise his powers subject to the superintendence, control and direction of the Board, and includes a director occupying the position of a managing director, by whatever name called;



(38) "member", in relation to a company, means—

(a) a subscriber to the memorandum of the company who shall be deemed to have agreed to become a member of the company and on its registration shall be entered as a member in its register;

(b) every other person who agrees in writing to become a member of the company and whose name is entered as a member in its register; and

(c) every other person holding shares of the company whose name is entered as a beneficial owner in the records of the depository;

(39) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies laws, or of this Act;

(40) "modify" and "modification" shall include the making of additions, alterations and omissions;

(41) "notification" or "notify" means a notification published in the Official Gazette;

(42) "offence" means an offence under this Act which is punishable with—

(a) imprisonment; or

(b) with imprisonment and fine; or

(c) with imprisonment or with fine, or with both; or

(d) with fine which exceeds ten thousand rupees;

(43) "officer" includes any director, manager, secretary, chief accounts officer, auditor or any person in accordance with whose directions or instructions the Board or any one or more of the directors is or are accustomed to act;

(44) "officer who is in default", in relation to any provision referred to in section 5, has the meaning specified in that section;

(45) "option in securities" has the same meaning as in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(46) "paid-up capital" or "capital paid-up" includes capital credited as paid-up;

(47) "prescribed" means prescribed by rules made under this Act;

(48) "previous companies law" means any of the laws specified in clause (ii) of sub-section (1) of section 3;

(49) "private company" means a private company as defined in section 3;

(50) "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate, but does not include an information memorandum or like document issued prior to the issue of a prospectus;

(51) "public company" means a public company as defined in section 3;

(52) "public financial institution" means—

(a) the Industrial Credit and Investment Corporation of India Limited;

(b) the Industrial Reconstruction Corporation of India Limited;

(c) the Industrial Development Bank of India;

(d) the Life Insurance Corporation of India;

(e) the Unit Trust of India; and

(f) any other institution declared by the Central Government to be a public financial institution and in force immediately before the commencement of this Act, or any institution notified under clause (c) of sub-section (1) of the Public Financial Institution (Obligation as to Fidelity and Secrecy) Act, 1983;

48 of 1983.

(53) "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881:

26 of 1881.

Provided that nothing in this clause shall apply to the holding of a general meeting of a company on a Sunday:

Provided further that no day declared by the Central Government to be a public holiday under that Act shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was made before the issue of the notice convening such meeting;

(54) "recognised stock exchange" has the same meaning as in the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(55) "Regional Director" means a Regional Director appointed under sub-section (1) of section 404;

(56) "register" means the register of members of a company and includes the register of debenture holders or holders of other securities maintained in any manner which is capable also of being retrieved by electronic means;

(57) "Registrar" means a Registrar of Companies, appointed under sub-section (2) of section 403 and includes an Additional, a Joint, a Deputy or an Assistant Registrar and also includes a company referred to in sub-section (1) of section 406; to discharge functions under sub-section (2) of that section;

(58) "relative" means a person who is related to another in the following manner, namely:—

(a) spouse;

(b) father (including step-father);

(c) mother (including step-mother);

(d) son (including step-son);

- (e) son's wife;
- (f) daughter (including step-daughter);
- (g) daughter's husband;
- (h) son's son;
- (i) son's daughter;
- (j) daughter's son;
- (k) daughter's daughter;
- (l) brother (including step-brother);
- (m) brother's wife;
- (n) sister (including step-sister);
- (o) sister's husband,

and includes a member of Hindu Undivided Family;

(59) "Schedule" means a Schedule annexed to this Act;

2 of 1934. (60) "scheduled bank" has the same meaning as in the Reserve Bank of India Act, 1934;

56 of 1980. (61) "secretary" means a company secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980, and includes any other person possessing the prescribed qualifications and appointed to perform the duties of a company secretary under this Act;

56 of 1980. (62) "secretary in whole-time practice" means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980, and who is not in any employment;

42 of 1956. (63) "securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, and includes hybrids, derivatives and units or any instrument which entitles the owner to be allotted any kind of property, or payment of money in lieu thereof at a future date;

15 of 1992. (64) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(65) "share" means a share in the share capital of a company;

(66) "share with differential rights" means a share that is issued with differential rights in accordance with the provisions of section 78;

(67) "subsidiary company" means a subsidiary company within the meaning of section 4;

(68) "total voting power", in regard to any matter relating to a body corporate, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of such body, if all the members thereof and all other persons, if any, having a right to vote on that matter are present at the meeting, and cast their votes;

(69) "trading corporation" means a trading corporation within the meaning of entries 43 and 44 in List I in the Seventh Schedule to the Constitution;

(70) "Tribunal" means the Company Law Tribunal constituted under sub-section (1) of section 416;

(71) "unlisted public company" means a company which is not a listed public company;

(72) "variation" shall include abrogation; and "vary" shall include abrogate;

(73) words and expressions used in this Act and not defined but defined in the Depositories Act, 1996, shall have the same meanings respectively assigned to them in that Act. 22 of 1996.

Definitions  
of  
"company",  
"existing  
company",  
"private  
company"  
and "public  
company".

3. (1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company" shall, subject to the provisions of sub-section (2), have the meanings specified below:—

(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below:—

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 and repealed by that Act; 10 of 1866.

(b) the Indian Companies Act, 1866; 10 of 1866.

(c) the Indian Companies Act, 1882; 6 of 1882.

(d) the Indian Companies Act, 1913; 7 of 1913.

(e) the Registration of Transferred Companies Ordinance, 1942; 54 of 1942.

(f) the Companies Act, 1956; 1 of 1956.

(g) any law corresponding to any of the Acts or the Ordinance aforesaid and in force—

(1) in the merged territories or in the territories which immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, were comprised in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or 7 of 1913.

(2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 in so far as other corporations are concerned; and 62 of 1956.  
25 of 1968.

7 of 1913.

(3) in the Union territory of Pondicherry or any part thereof, before the commencement of the Indian Companies Act, 1913 therein;

(h) the Portuguese Commercial Code, in so far as it relates to "*sociedades anonimas*";

(i) the Registration of Companies Act, Sikkim, 1961;

(iii) "private company" means a company which has a minimum paid-up capital of one lakh rupees, and by its articles,—

(a) restricts the right to transfer its shares, if any;

(b) limits the number of its members to fifty, not including—

(i) persons who are in the employment of the company; and

(ii) persons who having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased;

(c) prohibits any invitation to the public to subscribe for any securities of the company:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this sub-clause, be treated as a single member; and

(d) prohibits the invitation or acceptance of deposits from persons other than its members, directors or their relatives;

(iv) "public company" means a company which—

(a) is not a private company;

(b) has a minimum paid-up capital of five lakh rupees;

(c) is a private company which is a subsidiary of a company which is not a private company and has minimum paid-up capital of five lakh rupees.

(2) Where the articles of a company include the provisions which, under clause (iii) of sub-section (1), are required to be included in the articles of a company in order to constitute it a private company, but a default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act, and this Act shall apply to the company as if it were not a private company:

Provided that the Tribunal, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as may seem to the Tribunal just and expedient, order that the company be relieved from such consequences as aforesaid.

(3) Every private company, existing on the commencement of this Act with a paid-up capital of less than one lakh rupees, shall, within a period of one year from such commencement, enhance its paid-up capital to one lakh rupees.

(4) Every public company existing on the commencement of this Act with a paid-up capital of less than five lakh rupees, shall, within a period of one year from such commencement, enhance its paid-up capital to five lakh rupees.

(5) Where a private company or a public company fails to enhance its paid-up capital in the manner specified in sub-section (3) or sub-section (4), such company shall be deemed to be a defunct company within the meaning of section 383 and its name shall be struck off the register by the Registrar.

(6) Unless the context otherwise requires, a company, the registered office whereof is in Myanmar, Aden or Pakistan and which immediately before the separation of that country from India was a company as defined in clause (i) of sub-section (1) shall not be included within the scope of any of the expressions defined in clauses (i) to (iv) of sub-section (1), and such a company shall be deemed, for the purposes of this Act, to have been formed and registered outside India.

Meaning of  
"holding  
company"  
and "sub-  
sidiary".

4. (1) For the purposes of this Act, a company shall, subject to the provisions of this section, be deemed to be a subsidiary of another company (hereafter in this section referred to as that other company), if, but only if, that other company—

(a) controls the composition of its Board; or

(b) exercises or controls more than one-half of its total voting power in a case where it has issued securities and such securities have the same voting rights as equity shares; or

(c) holds more than one-half in value of its paid-up capital, in any other case:

Provided that no company which is a subsidiary of another company shall, after the commencement of this Act, be a holding company.

(2) For the purposes of sub-section (1), the composition of a company's Board shall be deemed to be controlled by another company, if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;

(b) that a person's appointment thereto follows necessarily from his appointment as director, or manager of, or to any other office or employment in, that other company; or

(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

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(b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of that other company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary shall be treated as not held or exercisable by that other company, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In the case of a body corporate, which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

(6) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate, whether alone or together with one or more other bodies corporate incorporated outside India.

(7) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 76.

5. For the purpose of any provision of this Act, which enacts that an officer of the company who is in a default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:—

Meaning of officer who is in default.

(a) the managing director or managing directors;

(b) the whole-time director or whole-time directors;

(c) any other director in respect of a contravention of any of the provisions of this Act which had taken place with his consent or connivance or is attributable to any neglect on his part;

(d) the chief accounts officer;

(e) the manager;

(f) the secretary;

(g) the auditor;

(h) any person in accordance with whose directions or instructions the Board is accustomed to act;

(i) in respect of the issue or transfer of any securities of the company, the share transfer agents, bankers, registrars to the issue, merchant bankers and debenture trustees;

(j) any person charged by the Board with the responsibility of complying with that provision:

Provided that the person so charged has given his consent in this behalf to the Board;

(k) where any company does not have any of the officers specified in sub-clauses (a), (b) and (e), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under sub-clause (j) or sub-clause (k), it shall, within thirty days of the exercise of such power, file with the Registrar a return in the prescribed form.

Act to  
override  
memoran-  
dum, etc.

6. Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

## PART II

### INCORPORATION OF COMPANY AND ALLIED MATTERS

#### CHAPTER I

##### COMPANIES INCORPORATED IN INDIA

##### *Certain associations and partnerships to be registered as companies under Act*

Prohibition  
of associa-  
tions and  
partnerships  
exceeding  
certain  
number.

7. (1) No association of persons or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of any other law.

(2) No association of persons or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other law:



Provided that in the case of an association of persons or partnership formed for the purpose of carrying on the profession of advocates, chartered accountants, cost accountants, doctors, architects or such other profession, as may be notified in this behalf by the Central Government, this sub-section shall have effect as if for the words "twenty persons", the words "fifty persons" had been substituted.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of an association or a partnership carrying on business in contravention of this section shall—

(a) be personally liable for all liabilities incurred in such business; and

(b) be punishable with fine which may extend to fifty thousand rupees.

#### *Memorandum of association*

8. (1) Any seven or more persons, or where the company to be formed is a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

Mode of forming incorporated company.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

(c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

9. (1) The memorandum of every company shall state—

(a) the name of the company with "Limited" as the last word of the name in the case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company;

Requirements with respect to memorandum.

(b) the State in which the registered office of the company is to be situate;

(c) (i) the main objects of the company to be pursued by the company; and

(ii) other objects of the company not included in sub-clause (i);

(d) that the liability of the members is limited by shares or by guarantee and, if so, it shall state that the liability of its members is limited;

(e) the share capital of the company; and

(f) the names and other particulars of the subscribers to the memorandum of the company;

(2) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceased to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In the case of a company having a share capital—

(a) unless the company is an unlimited company, the memorandum shall state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of memorandum shall take less than one share; and

(c) each subscriber of the memorandum shall write opposite his name the number of shares he takes.

(4) The memorandum shall—

(a) be printed either electronically or otherwise;

(b) be divided into paragraphs numbered consecutively;

(c) state the name of each subscriber, his address, description and occupation, if any, who shall sign in the presence of at least one witness who shall attest the signature; and

(d) include the name of each such witness, his address, description and occupation, if any.

Special resolution and confirmation by Tribunal required for alteration of memorandum.

10. (1) A company may, by a special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently;

(b) to attain its main objects by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to diversify its business;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration of the provisions of the memorandum relating to the change of place of registered office of a listed public company from one State to the another shall not take effect unless it is confirmed by the Tribunal on petition.

(3) Before confirming the alteration, the Tribunal shall be satisfied that sufficient notice has been given to—

(a) every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Tribunal, be affected by the alteration; and

(b) every creditor who, in the opinion of the Tribunal, is entitled to object to the alteration:

Provided that the Tribunal may, for special reasons, dispense with the notice required by clause (a) in the case of any person or class of persons specified in its order.

(4) The Tribunal shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before it and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Tribunal may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit and may make such order as to costs as it thinks proper, having regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.

11. (1) A company shall file with the Registrar,—

(a) the special resolution passed by a company in relation to clauses (a) to (g) of sub-section (1) of section 10, within one month from the date of such resolution; or

(b) a certified copy of the order of the Tribunal made under sub-section (5) of that section confirming the alteration, within three months from the date of order,

Alteration to be registered and effect of failure to register alteration.

as the case may be, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such documents:

Provided that the Tribunal, may, at any time on a petition filed before it, by order, extend the time for the filing of a copy of the order of the Tribunal or for the registration of the alteration by such period as it thinks proper:

Provided further that in a case where by reason of the alteration of the objects of any company under this sub-section, the name of the company is also required to be changed so as to reflect the alteration, the Registrar may, after giving an opportunity of being heard to the company, order the change of the name of the company accordingly.

(2) The certificate given under sub-section (1) shall be conclusive evidence that all the requirements of this Act in respect of the alteration and confirmation thereof have been complied with, and henceforth the memorandum, as so altered, shall be the memorandum of the company.

(3) Where the alteration involves the transfer of the registered office from one State to another, a certified copy of the order confirming the alteration, together with the

altered copy of the memorandum, shall be filed by the company with the Registrar of each of the States within three months from the date of the order, and the Registrar of each such State shall register the same and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred, shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

(4) No such alteration, as is referred to in section 10, shall have any effect until it has been duly registered in accordance with the provisions of this section.

(5) If the documents required to be filed with the Registrar under this section are not filed within the time allowed thereunder or extended by the Tribunal, such alteration and the order of the Tribunal made under sub-section (5) of section 10 and all proceedings connected therewith, shall at the expiry of such period, become void and inoperative:

Provided that the Tribunal may, on sufficient cause shown, revive the order on application made within a further period of one month.

Companies  
not to be  
registered  
with unde-  
sirable  
names.

12. (1) No company shall be registered by a name, which, in the opinion of the Central Government is undesirable.

(2) If, through inadvertence or otherwise a company on its first registration, or on its registration by a new name, is registered with an undesirable name, the company—

(a) may, by ordinary resolution, and with the previous approval of the Regional Director, change its name or new name;

(b) shall, if the Regional Director so directs, within twelve months of its first registration or registration by its new name, as the case may be, by ordinary resolution and with the previous approval of the Regional Director, change its name or new name within a period of three months from the date of the direction or such longer period as the Regional Director may think fit to allow.

(3) If a company makes a default in complying with any direction given under clause (b) of sub-section (2), the company, and every officer who is in default, shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(4) Without prejudice to the foregoing provisions of this section, a company may, by a special resolution and with the approval of the Regional Director in writing, change its name:

Provided that no such approval shall be required where the only change in the name of a company is the addition thereto, or, as the case may be, deletion therefrom of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.

(5) Where a company changes its name in pursuance of sub-section (2) or sub-section (4), the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(6) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(7) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

*Explanation.*—For the purposes of this section, a name of a company—

(a) which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered; or is registered; or

(b) is registered with a name which is not in accordance with the guidelines issued by the Central Government from time to time,

shall be deemed to be undesirable.

13. (1) Where it is proved to the satisfaction of the Central Government that an association—

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object not confined to one State; and

(b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

Power to register associations having charitable objects as limited companies.

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

(2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

(3) Where it is proved to the satisfaction of the Central Government—

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1); and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and sub-section (5) of section 12 shall apply to a change of name under this sub-section as it applies to a change of name under sub-section (4) of section 12.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.

(6) The Central Government may, by general or special order and to the extent specified in such order, exempt, the bodies to which a licence is granted under this section, from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section:

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8) (a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing;

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a);

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject;

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 10, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words and—

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and

(b) sub-section (5) of section 12 shall apply to a change of name under this sub-section as it applies to a change of name under sub-section (4) of that section.

(10) If the body makes a default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

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*Articles of association*

14. (1) There shall, in the case of every company, be registered with the memorandum and articles of association signed by the subscribers of the memorandum, prescribing regulations for the company.

Articles prescribing regulations to be registered with memorandum in case of all companies.

(2) In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered.

(3) In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered.

(4) In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in sub-clauses (a), (b), (c) and (d) of clause (iii) of sub-section (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub-clauses (b), (c) and (d).

(5) Articles shall—

(a) be printed, either electronically or otherwise;

(b) be divided into paragraphs numbered consecutively;

(c) state the name of each subscriber, his address, description and occupation, if any, who shall sign in the presence of at least one witness who shall attest the signature; and

(d) include the name of each such witness, his address, description and occupation, if any.

15. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles:

Alteration of articles by special resolution.

Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Registrar.

(2) Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by a special resolution.

(3) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Registrar, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of his approval.

*Change of registration of companies*

16. (1) Subject to the provisions of this section,—

(a) a company registered as an unlimited company may register under this Act as a limited company; and

Registration of unlimited company as limited, etc.

(b) a company already registered as a limited company may re-register under this Act as an unlimited company.

(2) On registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect, as if it were the first registration of the company under this Act.

(3) The registration of an unlimited company as a limited company or registration of a limited company as an unlimited company, under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by, to, with or on behalf of, the company before such registration, and those debts, liabilities, obligations and contracts may be enforced in the manner provided in Part IX in the case of a company registered under that Part.

*General provisions with respect to memorandum and articles*

Registration  
of memo-  
randum and  
articles.

17. (1) There shall be presented for registration, to the Registrar exercising jurisdiction over the area in which the registered office of the company is stated by the memorandum to be situate—

(a) the memorandum of the company;

(b) its articles; and

(c) the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager.

(2) A declaration by an advocate of the Supreme Court or of a High Court or a secretary or a chartered accountant in whole-time practice, in India who is engaged in the formation of a company that all the requirements of this Act and the rules thereunder have been complied with in respect of registration and matters precedent or incidental thereto, shall be filed with the Registrar; and the Registrar may accept such a declaration as sufficient evidence of such compliance.

(3) If the Registrar is satisfied that all the requirements aforesaid have been complied with by the company and that it is authorised to be registered under this Act, he shall retain and register the memorandum, the articles and the agreement referred to in clause (c) of sub-section (1), if any.

(4) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(5) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

(6) From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.



(7) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(8) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

18. (1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

Provision  
as to  
companies  
limited by  
guarantee.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

19. (1) Notwithstanding anything contained in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date, to contribute to the share capital of, or otherwise to pay money to, the company:

Effect of  
alteration  
in memo-  
randum or  
articles  
and copies  
to be given  
to members  
of the  
altered  
memo-  
randum and  
articles,  
etc.

Provided that this sub-section shall not apply—

(a) in any case where the member agrees in writing either before or after a particular alteration is made, to be bound by the alteration; or

(b) in any case where the company is a club or the company is any other association and the alteration requires the member to pay recurring or periodical subscriptions or charges at a higher rate although he does not agree in writing to be bound by the alteration.

(2) A company shall, on being so required by a member, send to him within seven days of the requirement and subject to the payment of such fees, as may be prescribed, a copy each of the following documents as in force for the time being—

(a) the memorandum;

(b) the articles; and

(c) every other agreement and every resolution referred to in section 147, if and in so far as they have not been embodied in the memorandum or articles.

(3) If a company makes a default in complying with the requirements of sub-section (2), the company, and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to one thousand rupees.

(4) Where an alteration is made in the memorandum or articles of a company, or in any agreement, or any resolution, referred to in section 147, every copy of the

memorandum, articles, agreement or resolution issued after the date of the alteration shall be in accordance with the alteration.

(5) If, at any time, the company issues any copies of the memorandum, articles, resolution or agreement, which are not in accordance with the alteration or alterations made therein before that time, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to one hundred rupees for each copy so issued.

#### *Membership of company*

Membership of holding company.

20. (1) Except in the cases mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply—

(a) where the subsidiary is concerned as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary is concerned as a trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary from continuing to be a member of its holding company if it was a member thereof before becoming a subsidiary of the holding company, but except in the cases referred to in sub-section (2), the subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof.

(4) Where a subsidiary company continues to be a member of a holding company under sub-section (3), nothing in this section shall prejudice its rights to be allotted bonus shares of such holding company.

(5) Subject to sub-section (2), sub-sections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said sub-sections (1) and (3) to such a body corporate included references to a nominee for it.

(6) In relation to a holding company which is either a company limited by guarantee or an unlimited company, the reference in this section to shares shall, whether or not the company has a share capital, be construed as including a reference to the interest of its members as such, whatever the form of that interest.

#### *Reduction of number of members below legal minimum*

Members severally liable for debts in certain cases.

21. If at any time the number of members of a company is reduced, in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole of the debts of the company contracted during that period, and may be severally sued therefor.

*Contracts and deeds, investments, seal, etc.*

22. (1) Contracts which, if made between private persons, are by law required to be in writing signed by the parties to be charged therewith, would be valid although made verbally and not reduced into writing, may be made in writing signed or, as the case may be, verbally, on behalf of the company by any person acting under its authority, express or implied, and may, in the same manner, be varied or discharged.

Contracts to be executed by company.

(2) A contract made according to sub-section (1) shall bind the company.

(3) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, drawn or endorsed in the name of, or on behalf or on account of, the company by any person acting under its authority, express or implied.

(4) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute any document on its behalf in any place either in or outside India.

(5) A document signed by such an attorney on behalf of the company and under his seal where sealing is required, shall bind the company and have the same effect as if it were under its common seal.

23. (1) Save as otherwise provided in sub-sections (2) to (5) or any other law for the time being in force and subject to the provisions of sub-sections (6) to (8), all investments made by a company on its own behalf shall be made and held by it in its own name.

Investments of company to be held in its own name.

(2) Where the company has a right to appoint any person or persons, or where any nominee or nominees of the company has or have been appointed, as a director or directors of any other body corporate, shares in such other body corporate to an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in its name and of each such person or nominee, or in the name of each such person or nominee.

(3) A company may hold any shares in its subsidiary in the name or names of its nominee or nominees of the company, if and in so far as it is necessary so to do, to ensure that the number of members of the subsidiary is not reduced, where it is a public company, below seven, and where it is a private company, below two.

(4) Sub-section (1) shall not apply to investments made by a company whose principal business consists of buying and selling of securities.

(5) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company, any securities for the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, or holding in the name of, a scheduled bank, being the bankers of the company, securities, in order to facilitate the transfer thereof:

Provided that if within a period of six months from the date on which the securities are transferred by the company to, or are first held by the company in the name of a scheduled bank as aforesaid, no transfer of such securities takes place, the company shall, as soon as practicable after the expiry of that period, have the

securities retransferred to it from the scheduled bank and hold the securities in its own name;

(c) from depositing with, or transferring to, any person any securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it; or

(d) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(6) The certificate or letter of allotment relating to the securities in which investments have been made by a company shall, except in the cases referred to in sub-sections (4) and (5), be in the custody of such company or a scheduled bank, being the bankers of the company.

(7) Where, in pursuance of sub-section (2), (3), (4) or (5), any securities in which investments have been made by a company are not held by it in its own name, the company shall forthwith enter in a register maintained by it for the purpose—

(a) the nature, value, and such other particulars as may be necessary fully to identify the shares or securities in question; and

(b) the bank or person in whose name or custody the shares or securities are held.

(8) The register kept under sub-section (7) shall be open to the inspection of any member or debenture holder of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in a general meeting, impose, so that not less than two hours in each day are allowed for inspection.

(9) If a default is made in complying with any of its requirements of sub-sections (1) to (8), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to fifty thousand rupees.

(10) If any inspection required under sub-section (8) is refused, the Tribunal may, without prejudice to the provisions of sub-section (9), by order, direct an immediate inspection of the register.

Power of  
company to  
have  
official  
seal for  
use outside  
India.

24. (1) A company whose objects require or comprise the transaction of business outside India may, if authorised by its articles, have for use in any territory, district or place not situate in India, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of the territory, district or place where it is to be used.

(2) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is a party in that territory, district or place.

(3) The authority of any agent authorised under sub-section (2) shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other document to which the seal is affixed, the date on which and the place at which, it is affixed.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

*Service of documents*

25. (1) A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by such other means as may be prescribed or by leaving it at its registered office:

Service of documents.

Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.

(2) A document may be served on a Registrar by sending it to him at his office in the manner provided in sub-section (1).

26. (1) A document may be served by a company on any member or a holder of any other security thereof either personally, or by sending it in the manner provided in sub-section (1) of section 25 to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him or by advertising it in a newspaper circulating in the neighbourhood of the registered office of the company.

Service of documents on members by company.

(2) Where a document is sent by post,—

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member or a holder of any security has intimated to the company in advance that documents should be sent to him under certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

(b) such service shall be deemed to have been effected,—

(i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted; and

(ii) in any other case, at the time at which the letter could be delivered in the ordinary course of post.

(3) A document advertised under sub-section (1) shall be deemed to be duly served on the day on which the advertisement appears, on every member or holder of any security of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him.

(4) A document may be served by the company on the joint-holders of a security by serving it on the joint-holder named first in the register in respect of the security.

(5) A document may be served by the company on the persons entitled to a security in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the

deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by serving the document in any manner in which it might have been served if the death or insolvency had not occurred.

*Authentication of documents and proceedings*

Authenti-  
cation of  
documents  
and proceed-  
ings.

27. Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the manager, the secretary or other authorised officer of the company, and need not be under its common seal.

PART II

COMPANIES INCORPORATED OUTSIDE INDIA

*Provisions as to establishment of place of business in India*

Definitions.

28. In this Part, unless the context otherwise requires,—

(a) "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(b) "director" in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(c) "place of business" includes a share transfer or share registration office;

(d) "prospectus" has the same meaning if it is used in relation to a company incorporated under this Act;

(e) "secretary" includes any person occupying the position of secretary, by whatever name called;

(f) "Indian Depository Receipt" means a receipt, evidencing and underlying foreign security, issued in India by a foreign company which has entered into an agreement with the issuer and depository, custodian and depository or underwriters and depository, in accordance with the terms of prospectus or letter of offer, as may be prescribed.

Application  
of sections  
28 to 46 to  
foreign  
companies.

29. (1) The provisions contained in the Chapter shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:—

(a) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act; and

(b) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent. of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India or by one or more citizens of India and one or

more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

30. (1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within thirty days of such establishment, deliver to the Registrar for registration—

Documents, etc., to be delivered to Registrar by foreign companies carrying on business in India.

(a) a certified copy of the charter or statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2);

(d) the name and address, or the names and addresses of one or more persons, resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in clause (c) of sub-section (1) shall contain the following particulars, that is to say,—

(a) with respect to each director—

(i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business or occupation, if any, or if he has no business or occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of its directors;

(b) with respect to the secretary, or where there are joint secretaries with respect to each of them—

(i) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address; and

(ii) in the case of a body corporate, its corporate name and registered or principal office;

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b) of this sub-section.

(3) Clauses (2) and (3) of the *Explanation* to sub-section (1) of section 238 shall apply for the purpose of the construction of references in sub-section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (1) of section 238.

(4) Foreign companies, other than those mentioned in sub-section (1), shall, if they had not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act. 1 of 1956.

Return to  
be delivered  
to Registrar  
by foreign  
company  
where  
documents,  
etc., altered.

31. If any alteration is made or occurs in—

(a) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company; or

(b) the registered or principal office of a foreign company; or

(c) the directors or secretary of a foreign company; or

(d) the name or address of any of the persons authorised to accept service on behalf of a foreign company; or

(e) the principal place of business of the company in India,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

Accounts of  
foreign  
company.

32. (1) Every foreign company shall, in respect of every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular, documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in a general meeting; and

(b) deliver three copies of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign companies, or class of foreign company the requirements of clause (a) shall not apply, or shall apply, subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1), three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.



**33. Every foreign company shall—**

(a) in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated;

(b) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

(d) if the liability of the members of the company limited, cause notice of that fact—

(i) to be stated in every such prospectus as aforesaid and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the languages or one of the language in general use in the locality in which the office or place is situate.

Obligation to state name of foreign company, whether limited, and country where incorporated.

**34. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person who has been authorised to accept service on behalf of the foreign companies and whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered:**

Service on a foreign company.

Provided that—

(a) where any such company makes a default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process; notices or other documents; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company or for any reason, cannot be served,

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

**35. (1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part except in sub-section (2) shall be construed accordingly.**

Office where documents to be delivered.

(2) Any such document as is referred to in sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company in India is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

**Penalties.**

36. If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in a default, shall be punishable with fine which may extend to ten thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to one thousand rupees for every day during which the default continues.

**Company's failure to comply with this Part not to affect its liability under contracts, etc.**

37. Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

**Registration of charges, appointment of receiver and books of account.**

38. (1) The provisions of sections 113 to 124 shall, so far as may be, apply to—

(a) charges on properties in India which are created by a foreign company after the 15th day of January, 1937; and

(b) charges on property in India which is acquired by any foreign company after the day aforesaid.

(2) The provisions of section 113 shall, so far as may be, apply to a foreign company.

(3) (a) The provisions of section 163 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(b) the provisions of section 130 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India;

(c) the provisions of section 163 and section 164 and sections 190 to 202 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.

(4) In applying the sections referred to in sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

39. There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.

Fees for registration of documents under this Part.

#### *Prospectus*

40. (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated; and

Dating of prospectus and particulars to be contained therein.

(a) contains particulars with respect to the following matters, namely:—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions having the force of enactments, by or under which the incorporation of the company was effected;

(iii) an address in India where the said instrument, enactments or provision, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has issued, or intends to issue, Indian Depository Receipts and if so, particulars thereof;

(vi) whether the company has established a place of business in India, and, if so, the address of its principal office in India; and

(b) states such matters, sets out such reports which shall have effect subject to such provisions, as may be prescribed under sub-section (2) of section 48:

Provided that sub-clauses (i), (ii) and (iii) of clause (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of clause (a) or (b) of sub-section (1), or purporting to affect him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India a form of application for securities of a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Part and the issue whereof in India does not contravene the provisions of section 41:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the securities.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (a) and (b) of sub-section (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Tribunal dealing with the case were immaterial, or was otherwise such as ought that in the opinion of Tribunal, having regard to all the circumstances of the case, reasonably to be excused:

Provided that in the event of failure to include in a prospectus a statement with respect to matters relating to the accounts of the company, as may be prescribed, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.

(5) This section—

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures or Indian Depository Receipts of the company, whether to the persons to whom a prospectus or application form is issued will, or will not, have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures or Indian Depository Receipts which are or are to be in all respects uniform with shares or debentures or Indian Depository Receipts previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

Provisions  
as to  
expert's  
consent and  
allotment.

41. (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures or Indian Depository Receipts of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India—

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by the provisions (other than penal provisions) of sections 64 and 65, so far as applicable.

(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant, merchant banker and any other person whose profession gives authority to a statement made by him; and for the purposes of this section a statement shall be

deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the fact thereof or by reference incorporated therein or issued therewith.

42. (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures or Indian Depository Receipts of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by a resolution of the managing body has been delivered for registration to the Securities and Exchange Board and the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy—

Registration of prospectus relating to foreign companies.

(a) any consent to the issue of the prospectus required by section 41;

(b) a copy of any contract required to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(c) where the persons making any report have made therein, or have, without giving the reasons, indicated therein any such adjustments, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The reference in clause (b) of sub-section (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

43. Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

Offer of Indian Depository Receipts.

(a) the offer of Indian Depository Receipts;

(b) requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipt;

(c) manner in which the Indian Depository Receipt shall be dealt in a depository, mode and by custodian and underwriters;

(d) manner of sale, transfer or transmission of Indian Depository Receipts,

by a company incorporated, or to be incorporated outside India, whether the company has or has not been established or, will or will not establish any place of business in India.

44. Any person who is knowingly responsible—

Penalty for contravention of sections 40, 41, 42 and 43.

(a) for the issue, circulation or distribution of a prospectus; or

(b) for the issue of a form of application for shares or debentures or Indian Depository Receipts,

in contravention of any of the provisions of sections 40, 41, 42 and 43, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Civil liability for mis-statements in prospectus with regard to a foreign company.

45. Section 54 shall extend to every prospectus offering for subscription shares in or debentures of, or Indian Depository Receipts of, a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 54 to section 49, of references to section 41.

Interpretation of provisions as to prospectus.

46. (1) Where any document by which any shares in, or debentures of, or Indian Depository Receipts of, a company incorporated outside India are offered for sale to the public, would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 56, to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part, to be a prospectus issued by the company offering such shares or debentures or Indian Depository Receipts for subscription.

(2) An offer of shares or debentures or Indian Depository Receipts for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures or Indian Depository Receipts, whether as principal or as an agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions "shares" or "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

#### PART IV

##### PROSPECTUS, ALLOTMENT, LISTING AND OTHER MATTERS RELATING TO THE ISSUE OF SECURITIES

##### *Prospectus*

Application of this Part including provisions of sections 94 to 110 and sections 159 to 164.

47. The provisions of this Part, the provisions of sections 94 to 110 and sections 159 to 164 shall,—

(i) in the case of listed public companies;

(ii) in case of those public companies which purport to be listed,

be administered by the Securities and Exchange Board; and

(iii) in any other case, be administered by the Central Government.

Matters and reports to be set out in prospectus.

48. (1) A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated and that date shall be taken to be the date of publication of the prospectus.

(2) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state such matters, set out such reports, and have effect subject to such provisions, as may be prescribed.

(3) Where any prospectus is published as a newspaper advertisement, or in any other manner, it shall be in the form of an abridged prospectus.

(4) A condition requiring or binding an applicant for the securities of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(5) No person shall issue any form of application for securities of a company, unless the form is accompanied by an abridged prospectus:

Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:

Provided further that this sub-section shall not apply if it is shown that the form of application was issued either—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the securities; or

(b) in relation to securities which were not offered to the public.

(6) If any person acts in contravention of the provisions of sub-section (5), he shall be punishable with fine which may extend to fifty thousand rupees.

(7) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the extent and nature of the interest, if any, of every director or promoter of the company and to such other matters as may be prescribed, unless it is proved that he had knowledge of the matters not disclosed.

(8) This section shall not apply—

(a) to the issue to the members or the existing holders of securities of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce the securities in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to securities which are, or are to be, in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act.

Statement of expert to be included in a prospectus only on certain conditions.

49. (1) A prospectus inviting persons to subscribe for securities shall not include a statement purporting to be made by an expert, unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion, or in the management, of the company.

(2) Where a statement purporting to be made by an expert is included in a prospectus, it shall specify that—

(a) he has given his written consent to the issue thereof and is responsible for all the statements included in the prospectus and has not withdrawn from his responsibility before the delivery of a copy of the prospectus for registration; and

(b) he has not withdrawn his consent as aforesaid.

(3) If any prospectus is issued in contravention of this section, the company, and every person, who is knowingly a party to the issue thereof, shall be punishable with fine which may extend to fifty thousand rupees.

(4) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

Registration of prospectus.

50. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered for registration to the Registrar, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto—

(a) any consent to the issue of prospectus and statement of responsibility of an expert required under section 49;

(b) in the case of a prospectus issued generally, also such other documents as may be prescribed;



Provided that where a company issues any foreign or Indian Depository Receipt, circular, information memorandum or prospectus containing—

- (i) price of the depository receipt issued or proposed to be issued;
- (ii) amount subscribed or expected to be subscribed;
- (iii) terms and conditions of conversion of deposit receipt into shares;
- (iv) other information and particulars of such Indian Depository Receipt,

shall also be filed along with the prospectus by the company or foreign company proposing to issue the Indian Depository Receipt:

Provided further that the information memorandum or the prospectus issued for subscription by Indian Depository Receipt shall be governed by the law of the country in which the registered office of the company is situated.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it,—

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus unless the requirements of sections 48, 49 and sub-sections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) A copy of every prospectus which has been filed for registration with the Registrar shall be simultaneously filed with the Securities and Exchange Board.

(5) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus, a copy of which has not been delivered under this section to the Securities and Exchange Board or the Registrar.

(6) If a prospectus is issued without a copy thereof being delivered under this section to the Securities and Exchange Board or the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

51. (1) Any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

Shelf  
prospectus.

(2) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

(3) A company filing a shelf prospectus shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government, prior to making of a second or subsequent offer of securities under the shelf prospectus.

(4) An information memorandum shall be issued to the public along with the shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus:

Provided that where an update of information memorandum is filed every time an offer of securities is made such memorandum together with the shelf prospectus shall constitute the prospectus.

*Explanation.*—For the purpose of this section,—

(a) "financing" means making loans to or subscribing in the capital of, a private industrial enterprise engaged in infrastructural financing or, such other company as the Central Government may notify in this behalf;

(b) "shelf prospectus" means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Information  
memoran-  
dum.

52. (1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.

(2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.

(3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.

(4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.

*Explanation.*—For the purposes of sub-sections (2), (3) and (4), "red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

(5) Every variation as made and highlighted in accordance with sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.

(6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock-invest, the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post-dated cheques or stock-invest before the date of opening of

the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of subscription paid.

(7) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

(8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock invest or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund or return of its post-dated cheques or stock-invest or subscription moneys or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen per cent. from the date of encashment till payment or realisation.

(9) Upon the closing of the offer for securities, a final prospectus stating therein the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only.

53. A company shall not, at any time, vary the terms of a contract referred to in the prospectus, except with the approval of, or under an authority given by, the company in a general meeting.

Terms of contract mentioned in prospectus not to be varied.

54. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for the securities of a company, the following persons shall be liable to pay compensation to every person who subscribes for any securities on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,—

Civil liability for mis-statements in prospectus.

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;

(c) every person who is a promoter of the company; and

(d) every person who has authorised the issue of the prospectus:

Provided that where, under section 49, an expert has given his consent, or where under sub-section (3) of section 50, the consent of a person named in a prospectus is

required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent;

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reasons therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the securities, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 49 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of or a correct and fair extract from, the document:

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given consent under section 49, as a person who has authorised the issue of the prospectus in respect of an untrue statement, purporting to be made by him as an expert.

(3) A person who, apart from this sub-section, would, under sub-section (1), be liable by reason of his having given a consent required of him under section 49 as a person who has authorised the issue of a prospectus in respect of an untrue statement, purporting to be made by him as an expert, shall not be so liable, if he proves—

(a) that, having given his consent under section 49 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(b) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the securities, believe, that the statement was true.

(4) Where—

(a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of a person is given under section 49 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent under section 49 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who, becomes liable to make any payment by virtue of this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the former person was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section,—

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formulation of the company; and

(b) the expression "expert" has the same meaning as in section 49.

55. (1) Where a prospectus includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

Criminal  
liability  
for mis-  
statements  
in pros-  
pectus.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given—

(a) the consent required by section 49 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by sub-section (3) of section 50.

Document containing offer of securities for sale to be deemed prospectus.

56. (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectus or otherwise relating to prospectuses shall apply with the modifications specified in sub-sections (3), (4) and (5), and have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(3) Sub-section (3) of section 48 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected.

(4) Section 50 as applied by this section shall have effect as if the persons making the offer were persons named in a prospectus as directors of a company.

(5) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be; and any such director or partner may sign through his agent authorised in writing.

57. (1) For the purposes of the foregoing provisions of this Part,—

(a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and

(b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

Interpretation of provisions relating to prospectus.

(2) For the purposes of sections 54, 55 and 56 and clause (a) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

58. (1) Any reference in this Act or in the articles of a company to offering securities to the public or to invitations to the public to subscribe for securities shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (2) and (3), be construed as including a reference to offering them or to invitations to subscribe for them, to any section of the public, whether selected as members or holders of other securities of the company concerned or as clients of the person issuing the prospectus or in any other manner.

Construction of references to offering securities to the public, etc.

(2) A provision in a company's articles prohibiting invitations to the public to subscribe for securities shall not be taken as prohibiting the making of an invitation to members or holders of any other securities of that company.

(3) Where any question arises as to the offer of any securities by a company, including the right to restrain any offer or issue it shall be decided by the company.

(4) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub-sections (1) and (2).

59. Notwithstanding anything contained in any other provisions of this Act, every listed public company making initial public offer of any security for a sum of rupees ten crores or more shall issue the same only in dematerialised form by complying with the requisite provisions of the Depositories Act, 1996 and the regulations made thereunder.

Initial offer of securities to be in dematerialised form in certain cases.

60. Any person who, whether knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into—

Penalty for fraudulently inducing persons to invest money.

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities, or by reference to fluctuations in the value of securities,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and also with fine which may extend to fifty thousand rupees.

Personation  
for  
acquisition,  
etc., of  
securities.

61. (1) Any person who—

(a) makes, in a fictitious name or description, an application to a company for acquiring, or subscribing or, any securities therein, or

(b) makes multiple applications to a company in different names or in different combinations of his name or his surname for acquiring or subscribing for, any securities of such company, or

(c) otherwise induces a company to allot, or register any transfer of securities therein to him, or any other person in a fictitious name or description,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and also with fine which may extend to fifty thousand rupees.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for securities which is issued by the company to any person.

#### *Allotment*

Prohibition  
of allotment  
unless  
minimum  
subscription  
received.

62. (1) No allotment shall be made of any securities of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by cheque, or other instrument which has been purchased by the applicant.

(2) In the event of any contravention of sub-section (1), every promoter, director or other person who is knowingly responsible for such contravention, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to ten thousand rupees.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "the minimum subscription".

(4) The amount payable on application on each share shall not be less than twenty-five per cent. of the nominal amount of the share.

(5) All moneys received from applicants for securities shall be deposited and shall continue to be kept deposited in a separate account in a scheduled bank until the entire amount payable on applications for securities in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the period specified for repayment of amount without interest under sub-section (7), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

(6) In the event of any contravention of the provisions of sub-section (5), the company, every promoters or officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and if any such money is not so re-paid within six months from the expiry of the eighth day also with imprisonment for a term which may extend to two years.

(7) If the minimum subscription is not received on the expiry of such period as may be prescribed after the first issue of the prospectus, all moneys received from applicants for securities shall forthwith be repaid to them without interest; and if any such money



is not so repaid within eight days thereafter, the company, every promoter or every officer of the company who is in default, shall be jointly and severally liable to repay that money with interest not less than six per cent. and not more than twenty per cent. as may be prescribed.

(8) Any condition purporting to require or bind any applicant for securities to waive compliance with any requirement of this section shall be void.

(9) Nothing in this section shall apply to a public financial institution.

63. (1) An allotment made by a company to an applicant in contravention of the provisions of section 62 shall be voidable at the instance of the applicant, within two months from the date of such allotment, notwithstanding that the company is in the course of being wound up. Effect of irregular allotment.

(2) If any director of a company knowingly contravenes, or wilfully authorises or permits the contravention of, any of the provisions of section 62 with respect to allotment, he shall, without prejudice to his being liable for penalty under that section, be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

64. (1) (a) No allotment shall be made of any securities of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on application made in pursuance of a prospectus so issued, until the beginning of the fifth day after the date on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus: Applications for, and allotment of, securities.

Provided that where, after a prospectus is first issued generally, a public notice is given by some person responsible under section 54 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the fifth day after the day on which such public notice is first given.

(b) Nothing in the foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to therein under the general law or under this Act.

(c) The beginning of the fifth day or such later time as is mentioned in clause (a) or, the beginning of the fifth day as is mentioned in the proviso to that clause, as the case may be, is hereinafter in this Act referred to as "the time of the opening of the subscription lists".

(2) In sub-section (1), the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement or in any other manner in accordance with the provisions of sub-section (3) of section 48.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section; but, in the event of any such contravention, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to fifty thousand rupees.

(4) In the application of this section to a prospectus offering securities for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution of the reference to the company and every officer of the company who is in a default of a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the contravention.

(5) An application for the securities of a company, which is made in pursuance of a prospectus issued generally shall be revocable—

(a) within five days of making an application but not later than the date of closure of the public issue, or

(b) within five days of issue of a public notice having the effect under section 54 of excluding, limiting or diminishing the responsibility of the person responsible for its issue.

(6) Notwithstanding anything contained in sub-section (5), the promoter or directors or relatives, associates or friends, of such promoters or directors as mentioned in the prospectus, if they have applied in pursuance of the prospectus, shall not be entitled to revoke such applications.

Allotment  
of securities  
to be dealt  
in on stock  
exchange.

65. (1) Every company, intending to offer securities to the public for subscription by the issue of a prospectus shall, before such issue, make an application to a regional stock exchange and one or more recognised stock exchanges for permission for such securities to be dealt in on the stock exchange or each such stock exchange.

(2) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the securities offered thereby to be dealt in on a regional stock exchange and one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the regional stock exchange before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any regional stock exchange refusing permission for the securities to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal. 42 of 1956.

(3) Where the permission has been granted by a regional stock exchange and one or more recognised stock exchanges and for dealing in any securities, the company shall make the allotment of securities within the period specified in the notification by the Securities and Exchange Board:

Provided that notwithstanding anything contained in this section, where the permission has been granted by a regional stock exchange for securities to be dealt on such Stock Exchange, the company may proceed to make allotment in accordance with the provisions of this section.

(4) Where permission has not been applied for under sub-section (1) or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer-in-default shall, on and from the expiry of the eighth day, be jointly

and severally liable to repay that money with interest at such rate, not less than six per cent. and not more than twenty per cent. as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(5) Where permission has been granted by a regional stock exchange and one or more recognised exchanges for dealing in any securities in such stock exchange and the moneys received from applicants for securities are in excess of the aggregate of the application moneys relating to the securities in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest, and if such money is not repaid within eight days, from the day the company becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than six per cent. and not more than twenty per cent. as may be prescribed.

(6) All moneys received as aforesaid shall be kept in a separate bank account maintained with a scheduled bank only until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (4); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to two years.

(7) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees, and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to two years.

(8) Moneys standing to the credit of the separate bank account referred to in sub-section (5) shall not be utilised for any purpose other than the following purposes, namely:—

(a) adjustment against allotment of securities, where the securities have been permitted to be dealt in on the regional stock exchange specified in the prospectus; or

(b) repayment of moneys received from applicants in pursuance of the prospectus, where securities have not been permitted to be dealt in on the regional stock exchange specified in the prospectus, as the case may be, or where the company is for any other reason unable to make the allotment of securities; or

(c) where such moneys have remained unclaimed or unpaid for a period of seven years, they shall be credited to the Investor Protection Fund established under sub-section (1) of section 414.

(9) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(10) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (2).

(11) This section shall have effect—

(a) in relation to any securities agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale, with the following modifications, namely:—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (4) to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (7) to the company and every officer of the company who is in a default, there shall be substituted a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the default.

(12) No prospectus shall state that application has been made for permission for the securities offered thereby to be dealt in on any stock exchange, unless it is a recognised stock exchange.

(13) In reckoning for the purposes of section 64 and this section, the fifth day, or the eighth day, after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the fifth, or eighth day (as so reckoned) is itself such a public holiday, there shall, for the said purposes, be substituted the first day thereafter which is not such a holiday.

26 of 1881.

*Explanation.*—For the purpose of this section, "regional stock exchange" means such recognised stock exchange which the Securities and Exchange Board may, notify, in this behalf.

Return  
as to  
allotments.

66. (1) Whenever a company having a share capital makes any allotment of its securities, it shall, within thirty days thereafter,—

(a) file with the Registrar, a return of the allotments stating the number and nominal amount of the securities comprised in the allotment, the names and addresses of the allottees, and the amount, if any, paid or due and payable on each security:

Provided that the company shall not show in such return any securities as having been allotted for cash if cash has not actually been received in respect of such allotment;

(b) in the case of securities other than bonus shares allotted as fully or partly paid-up otherwise than in cash, produce for the inspection and examination of the Registrar the contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or a contract for services or other consideration in respect of which the allotment was made, such contracts being duly stamped, and file with the Registrar copies of all such contracts verified in the prescribed manner and a return stating the number and nominal amount of securities so allotted, the extent to which they are to be treated as paid-up, and the consideration for which they have been allotted; and

(c) file with the Registrar—

(i) in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment, the names and addresses of the allottees and a copy of the resolution authorising the issue of such shares;

(ii) in the case of issue of shares at a discount, a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Tribunal sanctioning the issue.

2 of 1899.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1) is not reduced to writing, the company shall, within thirty days after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing; and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case, the period of thirty days specified in sub-sections (1) and (2) for compliance is or was inadequate, he may, on application made in that behalf by the company, whether before or after the expiry of the said period, extend that period as he thinks fit; and if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of thirty days, the extended period allowed by the Registrar were substituted.

(4) If a default is made in complying with the provisions of this section, every officer of the company who is in a default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues:

Provided that in case of contravention of the proviso to clause (a) of sub-section (1), every such officer and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to fifty thousand rupees.

(5) Nothing in this section shall apply to the issue and allotment by a company of securities which under the provisions of its articles were forfeited or cancelled for non-payment of calls.

#### *Commissions and discounts*

67. (4) A company may pay a commission which shall not exceed such percentage as may be prescribed, to any person in consideration of—

(a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company; or

(b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any securities of the company.

(2) Save as aforesaid and save as provided in section 71, no company shall allot any of its securities or apply any of its moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration specified in sub-section (1).

(3) Nothing in this section affect the power of any company to pay such brokerage as it had so far been lawful for a company to pay.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

(4) A vendor to, promoter of, or other person who receives payment in securities, or money from, a company shall have and shall be deemed always to have had power to apply any part of the securities, or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section.

(5) For the removal of doubts, it is hereby declared that no commission shall be paid under sub-section (1) to any person on securities which are not offered to the public for subscription:

Provided that where a person has subscribed or agreed to subscribe under sub-section (1) for any securities of the company and before the issue of the prospectus any other person or persons has or have subscribed for any or all of those securities and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus then, the company may pay commission to the first-mentioned person in respect of such subscription.

(6) If a default is made in complying with the provisions of this section, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

Restrictions on purchase by company of its own securities, or loans by company for purchase, of its own securities or of its holding company.

68. (1) No company limited by shares, and no company limited by guarantee and having a share capital, shall have power to buy its own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 86 to 90 or of section 272.

(2) No public company shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made by any person of or for any shares or securities in the company or in its holding company:

Provided that nothing in this sub-section shall be taken to prohibit—

(a) the lending of money by a banking company in the ordinary course of its business; or

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company; or

(c) the making by a company of loans, to persons (other than directors or managers) *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) No loan made to any person in pursuance of clause (c) of the foregoing proviso shall exceed the amount of his salary or wages at that time for a period of six months.

(4) If a company acts in contravention of sub-sections (1), (2) and (3), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to ten thousand rupees.

(5) Nothing in this section shall affect the right of a company to redeem any shares issued under section 72 or under any corresponding provision in any previous companies law.

69. (1) Notwithstanding anything contained in this Act, a Company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") from,—

Power of company to purchase its own securities.

(i) out of its free reserves; or

(ii) out of the securities premium account; or

(iii) out of the proceeds of any issue made specifically for buy-back purposes, if—

(a) such buy-back is authorised by such resolution passed in general meeting of the Company;

(b) the ratio of the debt owned by the company is not more than twice the capital and its free reserves after such buy-back.

*Explanation.*—For the purposes of this sub-section, "specified securities" includes, employees' stock option or other securities or having such underlying voting rights as may be notified by the Central Government from time to time.

(2) The notice of the meeting at which such resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) time limit for completion of buy-back.

(3) Every buy-back shall be completed within fifteen months from the date of passing the resolution under sub-section (1).

(4) The buy-back under sub-section (1) may be—

(a) from the existing security holders on a proportionate basis; or

(b) from the open market; or

(c) from odd lots, that is to say, where the lot of securities in a listed public company is smaller than such market lot as may be specified by the stock exchange; or

(d) through negotiation or other arrangement, subject to the condition that no votes are cast in favour of the special resolution referred to in clause (a) of sub-section (1) by any person whose securities are proposed to be bought by such negotiation or other arrangement; or

(e) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option.

(5) Where a company has passed a special resolution to buy-back its own shares or securities under this section, it shall, before making such purchases, file with the Central Government a declaration of solvency in the form prescribed, verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any.

(6) Where a company buys-back its own securities, it shall forthwith cancel the securities so bought-back.

(7) Where a company completes a buy-back of its securities under this section, it shall not make further issue of securities within a period of twelve months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes or conversion of preference shares or debentures into equity shares.

(8) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities and such other particulars as may be prescribed.

(9) A company shall, after the completion of the buy-back under this section, file with the Registrar a return containing such particulars relating to the buy-back within sixty days of such completion.

(10) If a company makes a default in complying with the provisions of this section or any rules made thereunder, the company or any officer of the company who is in a default, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both.

*Issue of securities at a premium and discount*

Application  
of  
premiums  
received  
on issue of  
securities.

70. (1) Where a company issues securities at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those securities shall be transferred to an account, to be called "the securities premium account"; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

(2) The securities premium account may, notwithstanding anything contained in sub-section (1), be applied by the company—

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off of the preliminary expenses of the company;

(c) in writing off of the expenses of, or the commission paid or discount allowed on, any issue of securities of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for buy-back of securities under section 69.



71. (1) A company shall not issue securities at a discount except as provided in this section.

Power to  
issue  
securities  
at a  
discount.

(2) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely:—

(i) the issue of the securities at a discount is authorised by a resolution passed by the company in a general meeting;

(ii) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(iii) not less than one year as at the date of the issue elapsed since the date on which the company was entitled to commence business; and

(iv) the securities to be issued at a discount are issued within two months after the date on which the resolution referred to in clause (i) above is passed.

(3) Every prospectus relating to the issue of the securities shall contain particulars of the discount allowed on the issue of the securities or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) If a default is made in complying with the provisions of this section, the company and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

#### *Issue and redemption of preference shares*

72. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company, are to be liable to be redeemed:

Power to  
issue  
redeemable  
preference  
shares.

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's securities premium account, before the shares are redeemed;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to an account, to be called the "capital redemption reserve account", a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve account were the paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its capital.

(4) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 409, be deemed to be increased by the issue of shares in pursuance of this sub-section.

(5) The capital redemption reserve account may, notwithstanding anything contained in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(6) Notwithstanding anything contained in this Act, no company limited by shares shall, issue any preference share which is irredeemable or is redeemable after the expiry of a period of twenty years from the date of its issue.

(7) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to ten thousand rupees.

Redemption  
of certain  
preference  
shares.

73. (1) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of Companies (Amendment) Act, 1996 and which is not redeemable before the expiry of ten years from the date of issue thereon in accordance with the terms of its issue and which had not been redeemed before such commencement, shall be redeemed by the company on the date on which such share is due for redemption on or before the 14th day of June, 1998, whichever is earlier:

5 of 1997.

Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Tribunal, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(2) Nothing contained in section 93 or any scheme referred to in sections 263 to 268, or in any scheme made under section 270, shall be deemed to confer power on any class of shareholders by resolution or on any Court or the Central Government to vary or modify the provisions of this section.

(3) If a default is made in complying with the provisions of this section,—

(a) the company making such a default shall be punishable with fine which may extend to one thousand rupees for every day during which such a default continues; and

(b) every officer of the company who is in a default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Further issue of capital*

74. (1) Where at any time after the expiry of two years from the formation of a public company, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,—

Further  
issue of  
capital.

(a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date;

(b) the offer aforesaid shall be made by notice containing such particulars as may be prescribed, and specifying the number of shares offered and limiting a time, not being less than fifteen days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined and such notice shall contain other particulars as may be prescribed;

(c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;

(d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board may dispose of them in such manner as they think most beneficial to the company.

*Explanation.*—In this sub-section, "equity share capital" and "equity shares" have the same meaning as in section 77.

(2) Where further shares are offered to the members under sub-section (1) or to any other person at a premium, the amount of such premium shall be approved by special resolution passed by the company.

(3) Notwithstanding anything contained in sub-section (1), further shares may be offered to any persons whether or not those persons include the persons referred to in clause (a) of sub-section (1) in any matter whatsoever—

(i) if a special resolution to that effect, and approving the premium, if any, is passed by the company in general meeting, or

(ii) if no such special resolution is passed, but the votes cast in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman), exceed the votes, if any, cast against the proposal by, members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy and the Tribunal is satisfied, on an application made by the company in this behalf, that the proposal is beneficial to the company:

Provided that no vote shall be cast by any person in favour of the special resolution referred to in clause (i) when shares are proposed to be offered to such person.

(4) Nothing in clause (c) of sub-section (1) shall be deemed—

(a) to extend the time within which the offer should be accepted, or

(b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(5) Notwithstanding anything contained in the foregoing provisions of this section, a company may, at any time, increase its subscribed capital by giving an option to its employees, officers or working directors to purchase its securities (hereinafter referred to as "employees' stock option"), pursuant to a scheme of option framed by the company in accordance with the provisions of this section.

(6) A company shall be entitled to make an issue of its securities to the persons referred to in sub-section (5) under the scheme of employees' stock option at prevailing market price or price specified in the offer:

Provided that where the value of securities under employees' stock in such value option scheme has actual purchase at a future date, the difference in such value shall not be payable the persons referred to in sub-section (5), increase in the value of securities at the time of such purchase.

(7) Every employees' stock option shall be made,—

(a) after the condition specified in clauses (i) and (ii) of sub-section (3) are satisfied;

(b) in such a manner that the amount of issue of shares under the employees' stock option and the share does not exceed more than five per cent. of the amount of total capital after such issue;

(c) in the case of listed public companies, in accordance with such conditions as may be prescribed;

(d) in the case of other companies, in accordance with such conditions which may be specified in the regulations made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

(8) Nothing in this section shall apply to increase of the subscribed capital when—

(a) such increase is by conversion of debentures or loans into share;

(b) subscription of share in the company is under a scheme of employees' stock option.

#### SHARE CAPITAL, DEBENTURES AND DEPOSITS

##### *Nature, numbering and certificate of shares*

Nature of shares, etc., and nomination.

75. (1) The shares, debentures or other interest of any member, in a company shall be movable property, transferable in the manner provided by the articles of the company.

(2) Every holder of shares in, or holder of debentures of, a company may, at any time nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(3) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(4) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in or debentures of the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in or debentures of the company, the nominee shall, on the death of the shareholder or holder of debentures of the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(5) Where the nominee is a minor, it shall be lawful for the holder of the shares in or holder of debentures, making the nomination to appoint in the prescribed manner any person to become entitled to shares in or debentures of the company, in the event of his death, during the minority.

(6) Each share in a company having a share capital shall be distinguished by its appropriate number.

Provided that nothing in this sub-section shall apply to the shares held with a depository.

(7) If a company fails to comply with any of the provisions of this section, it shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in a default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

76. (1) A certificate under the common seal of the company, specifying any shares held by any number, shall be *prima facie* evidence of the title of the member to such shares. Certificate of shares.

(2) A certificate may be renewed or a duplicate of a certificate may be issued, if the certificate—

(a) is proved to have been lost or destroyed, or

(b) having been defaced or mutilated or torn, is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, it shall be punishable with fine which may extend to one lakh rupees and every officer of the company who is in a default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

(4) Notwithstanding anything contained in the articles of a company, the time and manner of issue or renewal of a certificate of issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed.

(5) The provisions of this section shall apply to derivatives, options and shares with differential voting rights.

*Kinds of share capital*

Preference  
and equity  
share  
capital.

77. (1) "Preference share capital" means, with reference to any company limited by shares, that part of the share capital of the company which fulfils both the following requirements, namely:—

(a) that as respects dividends, it carries, or will carry, a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of, or subject to, income-tax; and

(b) that as respects capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up, whether or not there is a preferential right to the payment of either or both of the following amounts, namely:—

(i) any money remaining unpaid, in respect of the amounts specified in clause (a), up to the date of the winding up or repayment of capital; and

(ii) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

*Explanation.*—Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(i) that, as respects dividends, in addition to the preferential right to the amount specified in clause (a), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(ii) that, as respects capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in clause (b), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

(2) "Equity share capital" means, with reference to any such company, all share capital which is not preference share capital.

(3) The expression "preference share" and "equity share" shall be construed accordingly.

Kinds of  
share  
capital.

78. The share capital of a company limited by shares shall be of two kinds only, namely:—

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed;

(b) preference share capital.

Voting  
rights.

79. (1) Subject to the provisions of the proviso to sub-section (2) of section 81—

(a) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company; and

(b) his voting right on a poll shall be as stated in the articles.

(2) (a) Subject as aforesaid and save as provided in clause (b) of this sub-section, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares.

*Explanation.*—Any resolution for winding up the company or for the repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

(b) Subject as aforesaid, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, be entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such capital or any part of such dividend has remained unpaid—

(i) in the case of cumulative preference shares, in respect of an aggregate period of not less than two years preceding the date of commencement of the meeting; and

(ii) in the case of non-cumulative preference shares, either in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of not less than three years comprised in the six years ending with the expiry of the financial year aforesaid.

*Explanation.*—For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period, whether a dividend has been declared by the company on such shares for such period or not,—

(a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf; or

(b) in case no day is so specified, on the day immediately following such period;

(c) where the holder of any preference share has a right to vote on any resolution in accordance with the provisions of this sub-section, his voting right on a poll, as the holder of such share, shall, subject to the proviso to sub-section (2) of section 81, be in the same proportion as the capital paid-up in respect of the preference share bears to the total paid-up equity capital of the company.

80. Nothing in sections 77 to 79 shall apply to a private company unless it is a subsidiary of a public company. Saving.

#### *Miscellaneous provisions as to share capital*

81. (1) Where any calls for further share capital are made on shares, such calls shall be made on a uniform basis on all shares falling under the same class. Calls on shares.

*Explanation.*—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

(2) A company may, if so authorised by its articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called-up:

Provided that no such member shall be entitled, where the company is one limited by shares, to any voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

(3) A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share when a larger amount is paid-up in some shares than others.

Power of  
limited  
company to  
alter its  
share  
capital.

82. (1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may—

(a) increase its authorised share capital by such amount as it thinks expedient by creating new shares;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or

(d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company by ordinary resolution passed in a general meeting and shall not be required to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(4) If a company having a share capital has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) sub-divided its shares or any of them;

(c) redeemed any redeemable preference shares; or

(d) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 86 to 90,

the company shall within thirty days after doing so, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, sub-divided, redeemed or cancelled.

(5) The Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company's memorandum or articles or both.

(6) If a default is made in complying with the provisions of sub-section (4), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.



83. (1) Where a company having a share capital has increased its capital beyond authorised capital and where a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within thirty days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

Notice of increase of share capital or of members.

(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions, if any, subject to which new shares have been or are to be issued.

(3) If default is made in complying with this section, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

84. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

Power of unlimited company to provide for reserve share capital on re-registration.

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound-up;

(b) provide that a specified portion of its uncalled share capital, shall not be capable of being called up except in the event and for the purposes of the company being wound up.

85. A limited company may, by a special resolution, determine that any portion of its share capital which has not been already called-up shall not be capable of being called-up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called-up except in that event and for those purposes.

Reserve liability of limited company.

#### *Reduction of share capital*

86. (1) Subject to confirmation by the Tribunal, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by a special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may—

Special resolution for reduction of share capital.

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

Application to Tribunal for confirming order, objections by creditors and settlement of list of objecting creditors.

87. (1) Where a company has passed a resolution for reducing share capital, it may apply, by petition, to the Tribunal for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Tribunal so directs, the following provisions shall have effect, subject to the provisions of sub-section (3)—

(a) every creditor of the company who at the date fixed by the Tribunal is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the Tribunal shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which the creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Tribunal may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Tribunal may direct, the following amount, namely:—

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then, the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then, an amount fixed by the Tribunal after the like inquiry and adjudication as if the company were being wound-up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Tribunal may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that the provisions of sub-section (2) shall not apply as regards any class or classes of creditors.

Order confirming reduction and powers of Tribunal on making such order.

88. (1) The Tribunal, if satisfied with respect to every creditor of the company who under section 87 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged, or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Tribunal makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period commencing on, or at any time after, the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the Tribunal directs the reasons for reduction or such other information in regard thereto as the Tribunal may think expedient with a view to giving proper information to the public, and, if the Tribunal thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

**89. (1) The Registrar—**

Registration  
of order and  
minute of  
reduction.

(a) on production to him of an order of the Tribunal confirming the reduction of the share capital of a company; and

(b) on the delivery to him of a certified copy of the order and of a minute approved by the Tribunal showing, with respect to the share capital of the company as altered by the order—

(i) the amount of the share capital,

(ii) the number of shares into which it is to be divided,

(iii) the amount of each share, and

(iv) the amount, if any, at the date of the registration deemed to be paid-up on each share,

shall register the order and minute.

(2) On the registration of the order and minute, and not before the resolution for reducing share capital as confirmed by the order shall take effect.

(3) Notice of the registration shall be published in such manner as the Tribunal may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company, shall be deemed to be an alteration of the memorandum within the meaning and for the purposes of sub-sections (4) and (5) of section 19.

**90. (1)** A member of the company, past or present, shall not be liable, in respect of any share, to any call or contribution exceeding in amount the difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the minute of reduction:

Liability  
of members  
in respect  
of reduced  
shares.

Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of this ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on

the list of creditors, and after the reduction the company is unable, within the meaning of section 290, to pay the amount of his debt or claim, then—

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound-up on the day immediately before the said date; and

(b) if the company is wound-up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding-up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for  
concealing  
name of  
creditor,  
etc.

91. If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid;

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

#### *Variation of shareholders' rights*

Alteration  
of rights  
of holders  
of special  
classes of  
shares.

92. Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class—

(a) if provision with respect to such variation is contained in the memorandum or articles of the company, or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Rights of  
dissentient  
share-  
holders.

93. (1) If, in pursuance of any provision such as is referred to in section 92, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who, did not consent to or vote in favour of the resolution for the variation, may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

(2) An application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application, the Tribunal, after hearing the applicant and any other persons who apply to the Tribunal to be heard and appear to the Tribunal to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation; and shall, if not so satisfied, confirm the variation.

(4) The decision of the Tribunal on any such application shall be final.

(5) The company shall, within thirty days after the service on the company of any order made on any such application, forward a copy of the order to the Registrar; and if a default is made in complying with this provision, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

#### *Transfer of securities*

94. (1) A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company within six months excluding the period of book closure) from the date of execution, along with the certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures within six months (excluding the period of book closure) from the date of execution:

Transfer not to be registered except on production of instrument of transfer.

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee along with or without the certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit:

Provided further that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law but no such transmission shall be refused to be registered except on the ground that it will result in contravention of the provisions contained in sub-clause (b) of clause (iii) of sub-section (1) of section 3.

(2) In the case of a company having no share capital, sub-section (1) shall apply as if the references therein to shares were references to the interest of the member in the company.

(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.

95. A transfer of the share or other interest in a company of a deceased member thereof made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by legal representative.

96. (1) An application for the registration of the transfer of the shares or other interest of a member in a company may be made either by the transferor or by the transferee.

Application for transfer.

(2) Where the application is made by the transferor and relates to partly paid shares, the transfer shall not be registered, unless the company gives notice of the application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of the notice.

(3) For the purposes of sub-section (2), notice to the transferee shall be deemed to have been duly given if it is despatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

Power to  
refuse  
registration  
and appeal  
against  
refusal.

97. (1) A private company shall not approve the transfer of any shares unless it is approved by all the shareholders at its meeting.

(2) If a private company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(3) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Tribunal against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (2), either to register the transfer or transmission or to send notice of its refusal to register the same.

(4) An appeal under sub-section (3) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(5) If—

(a) the name of any person—

(i) is without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member including a refusal under sub-section (2),

the person aggrieved, or any member of the company, or the company, may apply to the Tribunal for rectification of the register.

(6) The Tribunal, while dealing with an appeal preferred under sub-section (3) or an application made under sub-section (5) may, after hearing the parties, either dismiss the appeal or reject the application, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(7) The Tribunal, while acting under sub-section (6), may, at its discretion, make,—

(a) such interim orders, including any orders as to, injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(8) On any application under this section, the Tribunal—

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(9) The provisions of sub-sections (5) to (8) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.

(10) If a default is made in giving effect to the orders of the Tribunal under this section, the company and every officer of the company who is in a default shall be punishable with fine which may extend to ten thousand rupees, and with a further fine which may extend to one thousand rupees for every day after the first day after which the default continues.

(11) Every appeal or application to the Tribunal under sub-section (3) or sub-section (5) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(12) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interests of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (5) to (8) shall apply as if the company were a public company:

Provided that the Tribunal may, in lieu of an order under sub-section (6), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Tribunal may determine to be a reasonable compensation for the right in all the circumstances of the case.

(13) If default is made in complying with any of the provisions of this section, other than sub-section (10), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(14) Nothing in this section and sections 94, 95 or 96 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.

Rectification  
of register  
on transfer.

98. (1) In this section, unless the context otherwise requires, "company" means a company, other than a private company.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable:

Provided that if a company, without sufficient cause, refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Tribunal and it shall, direct such company to register the transfer of shares.

(3) The Tribunal may, on an application made by a depository, company, participant or an investor or the Securities and Exchange Board, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such enquiry it thinks fit, direct any depository, or company to rectify its register or records.

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1 of 1986.

(4) The Tribunal while acting under sub-section (3) may at its discretion make such interim order as to suspend voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(6) Notwithstanding anything contained in this section, any further transfer during the pendency of the application with the Tribunal of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 97 shall, so far as may be, apply to the proceedings before the Tribunal under this section as they apply to the proceedings under that section.

Certifica-  
tion of  
transfers.

99. (1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be certificated if it bears the



words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company, if—

(i) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company's behalf; and

(ii) the certificate is signed by any officer or servant of the company or any other person, authorised to certify transfers on the company's behalf, or if a body corporate has been so authorised, by any officer or servant of that body corporate;

(c) a certification shall be deemed to be signed by any person, if it purports to be authenticated by his signature unless it is shown that the signature was placed there neither by himself nor by any other person authorised to use the signature for the purpose of certifying transfers on the company's behalf.

*Issue of Certificate of Shares, etc.*

100. (1) Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 25, the certificates of all shares, debentures and of debenture-stocks allotted or transferred:

Limitation  
of time for  
issue of  
certificate.

Provided that the Tribunal may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods.

*Explanation.*—The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

(2) If a default is made in complying with sub-section (1), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1), fails to make good the default within ten days after the service of the notice, the Tribunal may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to the depository immediately on allotment of such securities.

(5) The provisions of this section relating to the issue of shares or debentures shall apply to the issue of derivatives, options and shares with differential voting rights.

*Penalty for personation of shareholder*

Penalty for personation of shareholder.

101. If any person deceitfully personates an owner of any share or interest in a company, and thereby obtains or attempts to obtain any such shares or interest or receives or attempts to receive any money due to any such owner or attends any general meeting of the company or fraudulently exercised any voting or other rights, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Special provisions as to debentures*

Debentures with voting rights not to be issued hereafter.

102. No company shall issue any debentures which carry voting rights at any meeting of the company, whether generally or in respect of particular classes of business.

Debenture trust deed.

103. (1) A trust deed for securing any issue of debentures shall be in such form and shall be executed within such period as may be prescribed.

(2) A copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed.

(3) If a copy of the trust deed is not made available for inspection or is not given to any member or debenture holder, the company and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues.

Appointment of debenture trustees and duties of debenture trustees.

104. (1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed:

Provided that no person shall be appointed as a debenture trustee, if he—

(a) beneficially holds shares in the company;

(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;

(c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit—

(a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times;

(b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed;

(c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed;

(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as that Tribunal thinks necessary in the interests of holders of the debentures.

105. (1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

Liability of company to create security and debenture redemption reserve.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in a default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.

106. (1) A copy of any trust deed for securing any issue of debentures shall be forwarded to the holder of any such debentures or any member of the company, at his request and within seven days of the making thereof, on payment of such fee as may be prescribed.

Right to obtain copies of and inspect trust deed.

(2) If a copy is refused, or is not forwarded within the time specified in sub-section (1), the company, and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees and with a further fine which may extend to two hundred rupees for every day during which the offence continues.

(3) The trust deed referred to in sub-section (1) shall also be open to inspection by any member or debenture holder of the company in the same manner, to the same extent, and on payment of the same fees, as if it were the register of members of the company.

Liability  
of trustees  
for  
debenture  
holders.

107. (1) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Sub-section (1) shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths in value of debenture holders present and voting in person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Sub-section (1) shall not operate—

(a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub-section (4) remains a trustee of the deed in question; or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by sub-section (3), the benefit of that provision may be given either—

(a) to all trustees of the deed, present and future; or

(b) to any named trustees or proposed trustees thereof,

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for calling meetings, at a meeting called for the purpose in any manner approved by the Court.

Perpetual  
debentures.

108. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or, after the commencement of this Act, shall not be invalid by reason only that thereby, the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Power to  
re-issue  
redeemed  
debentures  
in certain  
cases.

109. (1) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then,—

(a) unless any provision to the contrary, whether express or implied, is contained in the articles, or in the conditions of issue, or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled;

the company shall have, and shall be deemed always to have had, the right to keep the debentures alive for the purposes of re-issue; and in exercising such a right, the company shall have, and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had never been redeemed.

(3) Where with the object of keeping debentures alive for the purpose of re-issue, they have been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(4) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped; but in any such case the company shall be liable to pay the proper stamp duty and penalty.

110. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Specific performance of contract to subscribe for debentures.

111. (1) Where either—

(a) a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge; or

(b) possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge;

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

then, if the company is not at the time in course of being wound-up, the debts which in every winding-up are, under the provisions of Part VII relating to preferential payments, to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the provisions aforesaid, section 359 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) The periods of time mentioned in the said provisions of Part VII shall be reckoned from the date of appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(4) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

*Acceptance of deposits*

Acceptance  
of deposits  
by  
companies.

112. (1) No private company shall invite or accept deposits from persons other than its members, directors or their relatives.

(2) No private company, which had become a public company by virtue of section 43A of the Companies Act, 1956 and continues to remain so after the commencement of this Act, shall invite or accept deposits from the public or renew the deposits which have been accepted before such commencement.

1 of 1956.

(3) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a public company either from the public or from its members.

(4) No public company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless—

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (3);

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed; and

(c) the company has not failed in regard to the repayment of any prior deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.

(5) The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement issued under clause (b) of sub-section (4).

(6) A deposit holder may, at any time, make a nomination and the provisions of section 75, shall, as far as may be, apply to the nomination made under this sub-section.

(7) Where a private company invites or accepts deposits in contravention of sub-section (1), or a public company invites, accepts or renews deposits in contravention of sub-section (2) or a public company invites, or allows any other person to invite or cause to be invited on its behalf any deposit in contravention of sub-section (4), as the case may be,—

(a) the company shall be punishable,—

(i) where such contravention relates to invitation or acceptance of any deposit or renewal of deposit, with fine not less than an amount equal to the amount of the deposit so accepted;

(ii) where such contravention relates to the invitation of any deposit, with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(8) (a) Nothing contained in this section shall apply to—

(i) a banking company, or

(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(b) Nothing contained in this section except the provisions relating to advertisement contained in clause (b) of sub-section (4), shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(9) Notwithstanding anything contained in this Act, a company, which has failed to make repayment of any deposit accepted under this section or part thereof or interest thereupon in accordance with the terms and conditions of such deposit, shall not,—

(a) declare or pay any dividend;

(b) make any loan or give any guarantee or provide any security in connection with such loan; and

(c) make any investment in securities,

till such failure is made good.

(10) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order issued either prospectively or retrospectively from a date not earlier than the commencement of this Act, grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order:

Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India.

(11) Where a company has failed to repay any deposit or part thereof or interest due in accordance with the terms and conditions of such deposit, the Tribunal may, if it is satisfied, either on its own motion or on the application of any depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof or interest thereon forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company, in respect of an arrangement, if any, proposed by the company for the repayment of the deposits and interest thereon and other persons interested in the matter.

(12) Whoever fails to comply with any order made by the Tribunal under sub-section (11) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such non-compliance continues.

*Explanation.*—For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

## PART V

### REGISTRATION OF CHARGES

Certain charges to be void against liquidator or creditors unless registered.

113. (1) Subject to the provisions of this Part, every charge created by a company shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, if any, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within thirty days from the date of its creation:

Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within sixty days next following the expiry of the said period of thirty days on payment of such fee as may be prescribed as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.

(2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.

(4) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property.

(7) Where any charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part



thereof, or any share or interest therein, shall be deemed to have notice of the charge as from the date of such registration.

114. (1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by this Act within sixty days from the date on which the acquisition is completed:

Registration of charges on properties acquired subject to charge.

Provided that, if the property is situate, and the charge was created, outside India, thirty days after the date on which a copy of the instrument could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for thirty days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If a default is made in complying with sub-section (1), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

115. (1) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of section 113, be sufficient, if there are filed with the Registrar, within thirty days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

Particulars to be filed in case of series of debentures and commission, etc., on debentures.

(a) the total amount secured by the whole series;

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the Registrar, for entry in the register, particulars of the date and amount of each issue; but an omission to do this shall not affect the validity of the debentures issued.

(2) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under section 113 and sub-section (1) of this section shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this sub-section, be treated as the issue of the debentures at a discount.

Register of charges to be kept by Registrar.

116. (1) The Registrar shall, in respect of each company, cause to be kept a register containing the particulars of all the charges requiring registration under this Part.

(2) Every company shall forward to the Registrar for being entered in the register kept under sub-section (1) the particulars of all the charges requiring registration under this Part in such form and manner, within such period, and after payment of such fees, as may be prescribed:

Provided that the period prescribed for registration under this sub-section may, for reasons to be recorded in writing, be extended by the Registrar by a like period.

(3) The particulars of the charges referred to in sub-section (1) shall relate to,—

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 115;

(b) in the case of any other charge,—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(4) The pages of the register shall be consecutively numbered and the Registrar shall,—

(a) cause to be kept in such register in the prescribed form the documents of charges filed in such form and manner as may be prescribed; and

(b) sign or initial every page of such register.

(5) After entering the particulars of all the charges required under sub-section (1), the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part to the person filing it after duly stamping and signing as evidence of registration.

(6) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee as may be prescribed for each inspection.

(7) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges registered with him in pursuance of this Part.

Endorsement of registration on debenture.

117. (1) The company shall cause the fact of the registration given under sub-section (5) of section 116, to be endorsed on every debenture which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause the fact of registration of any charge so given to be endorsed on any debenture issued by the company before the charge was created.

(2) If any person knowingly delivers, or wilfully authorises or permits the delivery of, any debenture which, under the provisions of sub-section (1), is required to have endorsed on it a copy of certificate of registration, he shall, without prejudice to any other liability, be punishable with fine which may extend to ten thousand rupees.

118. (1) It shall be the duty of a company to file with the Registrar for registration the particulars of every charge created by the company, and of every issue of debentures of a series, requiring registration under this Part; but registration of any such charge may also be effected on the application of any person interested therein.

Duty of company as regards registration and right of interested party.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees paid by him to the Registrar on the registration.

(3) Whenever the terms or conditions, or the extent or operation, of any charge registered under this Part are or is modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this Part as to registration of a charge shall apply to such modification of the charge.

119. (1) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property of a company, or if any person appoints such receiver or person under any powers contained in any instrument, he shall, within thirty days from the date of the passing of the order or of making of the appointment under the said powers, give notice of the fact to the Registrar; and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

Entry in register of charges of appointment of receiver or manager.

(2) Where any person so appointed under the powers contained in any instrument ceases to act as such, he shall, on so ceasing, give to the registrar notice to that effect; and the Registrar shall enter the notice in the register of charges.

(3) If any person makes a default in complying with the requirements of sub-section (1) or sub-section (2), he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

120. (1) The company shall give intimation in the prescribed form to the Registrar of the payment or satisfaction, in full, of any charge relating to the company and requiring registration under this Part, within thirty days from the date of such payment or satisfaction:

Company to report satisfaction and procedure thereafter.

Provided that the Registrar may allow aforesaid intimation to be given within sixty days next following the expiry of the aforesaid period of thirty days on payment of such fee, as may be prescribed, if the company satisfies the Registrar that it had sufficient cause for not giving the intimation within the said period.

(2) The Registrar shall, on receipt of such intimation, and after being satisfied that it is complete in all respects, order that a memorandum of satisfaction shall be entered in the register of charges.

(3) Nothing in this section shall be deemed to affect the power of the Registrar to make an entry in the register of charges under section 121 otherwise than on receipt of an intimation from the company.

Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

121. The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

(2) Where the Registrar enters a memorandum of satisfaction in whole or in part, in pursuance of section 120 or this section, he shall furnish the company with a copy of the memorandum.

Rectification by Tribunal of register of charges.

122. (1) The Tribunal, on being satisfied—

(a) that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part, or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 120 or section 121, was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or

(b) that on other grounds it is just and equitable to grant relief,

may on the application of the company or any person interested and on such terms and conditions as seem to the Tribunal just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) The Tribunal may make such order as to the costs of an application under subsection (1) as it thinks fit.

(3) Where the Tribunal extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

Penalties.

123. (1) If a default is made in filing with the Registrar for registration the particulars—

(a) of any charge created by the company;

(b) of the payment or satisfaction of a debt in respect of which a charge has been registered under this Part; or

(c) of the issues of debentures of a series,

requiring registration with the Registrar under the provisions of this Part, then unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is in a default, shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes a default in complying with any of the other requirements of this Act as to the registration with the Registrar of any charge created by the company or of any fact connected therewith, the company, and every officer of the company who is in a default, shall without prejudice to any other liability, be punishable with fine which may extend to ten thousand rupees.

124. (1) Every company shall keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company, and all floating charges on the undertaking or on any property of the company, giving in each case—

Company's register of charges.

(i) a short description of the property charged;

(ii) the amount of the charge; and

(iii) except in the case of securities of bearer, the names of the persons entitled to the charge.

(2) If any officer of the company knowingly omits, or wilfully authorises or permits the omission of, any entry required to be made in pursuance of sub-section (1), he shall be punishable with fine which may extend to five thousand rupees.

(3) Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

(4) The copies of instruments creating charges kept in pursuance of sub-section (3) of this section, and the register of charges kept in pursuance of sub-section (1) of this section, shall be open during business hours (but subject to such reasonable restrictions as the company in a general meeting may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of any creditor or member of the company without fee, at the registered office of the company.

(5) The register of charges and the copies of instruments kept in pursuance of this section shall also be open, during business hours but subject to the reasonable restrictions aforesaid, to the inspection of any other person on payment of a fee of such sum as may be prescribed for each inspection, at the registered office of the company.

(6) If the inspection of the said register or copies of instruments is refused, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to two hundred rupees for every day during which the refusal continues.

## PART VI

## MANAGEMENT AND ADMINISTRATION

## Chapter I

## GENERAL PROVISIONS

## Registered office and name

Registered  
office of  
the  
company.

125. (1) A company shall, on and from the thirtieth day after the date of its incorporation, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein, shall be given within thirty days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:

Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the company.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Publication  
of name by  
company.

126. (1) Every company—

(a) shall paint or affix its name and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages, in general use in that locality, also in the characters of that language or of one of those languages;

(b) shall have its name engraven in legible characters on its seal; and

(c) shall have its name and address of its registered office mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices and other official publications; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name and the address of its registered office, or keep the same painted or affixed in the manner directed by clause (a) of sub-section (1), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees for not so painting or affixing its name and the address of its registered office, and for every day during which its name and the address of the registered office, is not so kept painted or affixed.

(3) If a company fails to comply with clause (b) or clause (c) of sub-section (1), the company shall be punishable with fine which may extend to five thousand rupees.

(4) If an officer of a company or any person on its behalf—

(a) uses, or authorises the use of, any seal purporting to be a seal of the company whereon its name is not engraven in the manner aforesaid;

(b) issues, or authorises the issue of, any business letter, bill head, letter paper, notice or other official publication of the company wherein its name and the address of its registered office are not mentioned in the manner aforesaid;

(c) signs, or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or

(d) issues, or authorises the issue of, any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid;

such officer or person shall be punishable with fine which may extend to five thousand rupees, and shall further be personally liable to the holder of the bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company.

127. (1) Where any notice, advertisement or other official publications or any business letter, bill head or letter paper, of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication or such letter, bill head or letter paper, shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

Publication of authorised as well as subscribed and paid-up capital.

(2) If default is made in complying with the requirements of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand rupees.

#### *Registers of members and debenture holders*

128. (1) Every company shall keep in one or more books a register of its members and a register of holders of its debentures and enter therein the following particulars, namely:—

Register and index of members and debenture holders.

(a) the name and address of each member and debenture holder;

(b) the shares held by each member distinguishing each share by its number, except where such shares are held with a depository, and the amount paid or agreed to be considered as paid on those shares;

(c) the debentures held by each holder, distinguishing each debenture by its number, except where such debentures are held with a depository, and the amount paid or agreed to be considered as paid on those debentures;

(d) the date at which each person was entered in the register as member or debenture holder; and

(e) the date at which any person ceased to be a member or debenture holder.

(2) If default is made in complying with sub-section (1), the company and every officer of the company, who is in a default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3) Every company having more than fifty members or fifty debenture holders shall, unless the register of members or the register of debenture holders, as the case may be, is in such a form as in itself to constitute an index, keep an index (which may be in the form of card index) of the names of members or debenture holders of the company and shall, within fourteen days after the date on which any alteration is made in the register of members or, as the case may be, register of debenture holders, make the necessary alterations in the index.

(4) The index shall, in respect of each member or debenture holder, contain a sufficient indication to enable the entries relating to that member or debenture holder in the register of members or the register of debenture holders, as the case may be, to be readily found.

(5) The Index shall, at all times, be kept at the same place as the register of members or the register of debenture holders.

(6) If default is made in complying with sub-sections (3), (4) and (5), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

(7) Sub-sections (1) to (4) shall not apply with respect to debentures which, *ex facie*, are payable to the bearer thereof.

(8) A company may, after giving not less than seven days' previous notice by advertisement in some newspapers circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time.

(9) If the register of members or of debenture holders is closed without giving the notice provided in sub-section (8), or after giving the shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the register is so closed.

(10) A company may, notwithstanding the particulars of its members and holders of its debentures are provided in sub-section (1), keep a record of the particulars of its members and holders of its debentures as required under the said section in computer floppies or diskettes, and may provide such safeguards as may be prescribed:

Provided that, except the manner of keeping particulars of members and holders of debentures of the company, the other provisions of this Part shall apply to record kept on computer floppies or diskettes in the same manner as they are applicable to the register and the index of members and holders of debentures of the company.



22 of 1996.

(11) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be a register and index of members or debenture holders, as the case may be, for the purposes of this Act.

129. No notice of any trust, express, implied or constructive, other than mutual trusts and such other trusts as may be notified, shall be entered on the register of members or of debenture holders.

Trust not to be entered on register.

*Annual returns*

130. (1) Every company, whether having a share capital or not, shall, within thirty days from the day on which each of the annual general meetings referred to in section 133 is held, prepare and file with the Registrar a return containing in such form as may be prescribed, regarding—

Annual return to be made by a company

(a) its registered office;

(b) the register of its members containing the names of five hundred members who hold the largest number of shares or the actual number of members, whichever is lower;

(c) the register of its debenture holders containing five hundred debenture holders who hold the largest number of debentures or the actual number of debenture holders, whichever is lower;

(d) its securities;

(e) its indebtedness;

(f) its directors, managing and whole-time directors, manager, secretary and chief financial officer;

(g) the particulars relating to foreign depository receipts issued by the company;

(h) particulars of every employee who was in receipt of remuneration exceeding five lakh rupees or such higher remuneration as may be prescribed; and

(i) particulars of every employee who was in receipt of remuneration which is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children not less than two per cent. of the equity shares of the company.

(2) The return required to be filed under this section shall be in the prescribed form or as near thereto as circumstances admit, and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting.

(3) A copy of the annual return to be filed with the Registrar under this section shall be signed by the managing director, if any, or signed both by a director and by the manager or secretary of the company, or where there is no manager or secretary, by two directors of the company:

Provided that where the annual return is filed by a listed public company, the copy of such annual return shall also be signed by a secretary in whole-time practice.

(4) Any reference in this section or in any prescribed form, to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.

(5) There shall also be filed with the Registrar along with the return a certificate signed by the signatories of the return, stating—

(a) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely;

(b) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and

(c) in the case of a private company also, (i) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, (ii) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (b) of clause (iii) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty; and that the company has not invited or accepted deposits from the public, other than from its members, directors or their relatives.

(6) If a company fails to comply with any of the provisions contained in this section or in the prescribed form of annual return, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Commence-  
ment of  
business.

131. (1) A company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business unless—

(a) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and

(b) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice, in the prescribed form, that clause (a) of this sub-section or, as the case may be, sub-section (2) has been complied with.

(2) Notwithstanding anything contained in sub-section (1), where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands, or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled to do so, vote in person, or where proxies are allowed, by proxy exceed the votes, if any, cast against the proposal by members so entitled and voting, the Tribunal may, on an application made to it by the Board in this behalf, allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five thousand rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a Government company.

*General provisions regarding registers and returns*

132. (1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under section 130, shall be kept at the registered office of the company:

Place of  
keeping,  
and inspection  
of  
registers  
and  
returns.

Provided that such registers, indexes and returns or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, or within any other city, town or village in which a substantial number of members or debenture holders entered in the register of members or debenture holders, as the case may be, reside, if—

(i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, and

(ii) the Registrar has been given in advance a copy of the proposed special resolution.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation, and for the disposal whether by destruction or otherwise, of the registers, indexes and returns referred to in sub-section (1).

(3) The registers, indexes and returns referred to in sub-section (1) shall except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection—

(a) of any member or debenture holder, without any fee; and

(b) of any other person, on payment of such sum as may be prescribed for each inspection.

(4) Any such member, debenture holder or other person may—

(a) make extracts from any register, index, or copy referred to in sub-section (1) without any fee or additional fee, as the case may be; or

(b) require a copy of any such register, index or copy or of any part thereof, on payment of such sum as may be prescribed.

(5) The company shall cause any copy required by any person under clause (b) of sub-section (4) to be sent to that person within a period of ten working days from the day on which the requirement is received by the company.

(6) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (5), the company, and every officer of the company who is in a default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees for every day during which the refusal or default continues.

(7) The Tribunal may also, by order, compel an immediate inspection of the document, or direct that an extract thereof shall forthwith be allowed to be taken by the person requiring it, or that the copy shall forthwith be sent to the person requiring it, as the case may be.

(8) The register of members, register of debenture holders and annual returns referred to in section 133, shall be *prima facie* evidence of any matters directed or authorised to be inserted therein by this Act.

#### *Meetings and its proceeding*

#### Annual General Meeting.

133. (1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:

Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose:

Provided further that—

(a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

(b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meeting.

(3) If default is made in holding an annual general meeting in accordance with this section, the Tribunal may, notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company, call or direct the calling of, general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient in relation to the calling, holding and conducting of the meeting.

*Explanation.*—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) A general meeting held in pursuance of sub-section (3) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company.

(5) If a default is made in holding a meeting of the company in accordance with this section, or in complying with any directions of the Tribunal under sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing a default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such a default continues.

134. (1) The Board shall, on the requisition of such number of members of the company as is specified in sub-section (4), forthwith proceed duly to call an extraordinary general meeting of the company which shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Calling of  
extra-  
ordinary  
general  
meeting on  
requisition.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be—

(a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting in regard of that matter;

(b) in the case of a company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one-tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in the requisition, the provisions of sub-section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub-section is fulfilled.

(6) If the Board does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to call a meeting for the consideration of those matters on a day not later than forty-five days from the date of the deposit of the requisition, the meeting may be called—

(a) by the requisitionists themselves;

(b) in the case of a company having a share capital, by such of the requisitionists as represent either a majority in value of the paid-up share capital held by all of them or not less than one-tenth of such of the paid-up share capital of the company as is referred to in clause (a) of sub-section (4), whichever is less; or

(c) in the case of a company not having a share capital, by such of the requisitionists as represent not less than one-tenth of the total voting power of all the members of the company referred to in clause (b) of sub-section (4).

*Explanation.*—For the purposes of this sub-section, the Board shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub-section (2) of section 149.

(7) A meeting called under sub-section (6) by the requisitionists or any of them shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but shall not be held after the expiration of three months from the date of the deposit of the requisition.

(8) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by the first of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(9) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call a meeting shall be re-paid to the requisitionists by the company; and any sum so paid shall be recovered by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in a default.

Sections  
136 to 144  
to apply to  
meetings.

135. (1) The provisions of sections 136 to 144—

(i) shall, notwithstanding anything to the contrary in the articles of the company, apply with respect to general meetings of a public company, and of a private company which is a subsidiary of a public company; and

(ii) shall, unless otherwise specified therein or unless the articles of the company otherwise provide, apply with respect to general meetings of a private company which is not a subsidiary of a public company.

(2) Unless the articles of the company or a contract binding on the persons concerned otherwise provide, sections 136 to 144 with such adaptations and modifications, if any, as may be prescribed, shall apply with respect to meetings of any class of members, or of debenture holders or any class of debenture holders, of a company, in like manner as they apply with respect to general meetings of the company.

Length of  
notice for  
calling  
meeting.

136. (1) A general meeting of a company may be called by giving not less than twenty-one days' notice in writing.

(2) A general meeting, other than the annual general meeting of a listed public company, may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto—

(i) in the case of an annual general meeting, by all the members entitled to vote thereat; and

(ii) in the case of any other meeting, by members of the company—

(a) holding, if the company has a share capital, not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.

137. (1) Every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat and the notice of an annual general meeting shall also state that the registers maintained under sections 128, 237 and 241 shall be open for inspection during and at the place of meeting.

Contents and manner of service of notice and persons on whom it is to be served.

(2) Notice of every meeting of the company shall be given—

(i) to every member of the company, in any manner authorised by sub-sections (1) to (4) of section 26;

(ii) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred; and

(iii) to the auditor or auditors for the time being of company, in any manner authorised by section 26 in the case of any member or members of the company:

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (5) of section 26, the statement of material facts referred to in sub-section (2) of section 138 need not be annexed to the notice as required by that section and it shall be sufficient if the advertisement mentions that the said statement has been forwarded to the members of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

138. (1) For the purposes of this section—

(a) in the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) the consideration of the accounts, balance-sheet and the reports of the Board and auditors, (ii) the declaration of a dividend, (iii) the appointment of directors in the place of those retiring, and (iv) the appointment of, and the fixing of remuneration of the auditors; and

Explanatory statement to be annexed to notice.

(b) in the case of any other meeting, all business shall be deemed special.

(2) Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of concern or interest or the financial implications and specific nature of the interest of any director or his relatives or the manager, if any, in such a manner as to enable a shareholder to exercise his judgment in a meaningful manner:

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director his relatives and the manager, if any, of the first mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent. of the paid-up share capital of that other company.

(3) Where as a result of the non-disclosure or insufficient disclosure being made by a director or manager, if any benefit accrues to the director or his relatives or manager either directly or indirectly, the director or the manager shall hold such benefit in trust for the benefit of the company and he shall, without prejudice to any other penalty leviable under this Act or under any other law for the time being in force, be liable to reimburse the company or where such benefit cannot be determined in terms of monetary value, compensate the company to the extent of the benefit received by him.

(4) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

(5) If default is made in complying with the provisions of this section, every officer of the company shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and fine which shall not be less than ten thousand rupees.

Quorum for  
meeting.

139. (1) Unless the articles of the company provide for a larger number, two members personally present in the case of a private company, five members personally present in the case of an unlisted public company and fifty members or members constituting one per cent. of the total number of members of the company, whichever is less, personally present in the case of a listed public company shall be the quorum for a meeting of the company.

(2) Unless the articles of the company otherwise provide, the provisions of subsections (3), (4) and (5) shall apply with respect to the meetings of a company.

(3) If within half an hour from the time appointed for holding a meeting of a company, a quorum is not present, the meeting, if called upon the requisition of members, shall stand dissolved.

(4) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.

(5) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.



140. (1) Unless the articles of the company otherwise provide, the chairman of the Board, if any, shall preside over all the meetings of the company and where the chairman is absent, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

Chairman  
of  
meeting.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, and the chairman elected on a show of hands shall exercise all the powers of the chairman.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

141. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote on a poll instead of himself irrespective of the number of shares he holds and once a proxy is given it shall be final:

Proxies.

Provided that unless the articles otherwise provide,—

(a) this sub-section shall not apply in the case of a company not having a share capital;

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) proxy shall be made in favour of one or more persons alternatively, but not more than one form shall be executed.

(2) In every notice calling for a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, to attend and vote on a poll, instead of himself, and that a proxy need not be a member.

(3) If default is made in complying with sub-section (2) as respects any meeting, every officer of the company who is in a default shall be punishable with fine which may extend to fifty thousand rupees.

(4) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issued the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to ten thousand rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available

on request in writing to every member entitled to vote at the meeting by proxy.

(6) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it and shall be furnished within the prescribed time.

(7) An instrument appointing a proxy, in any of the prescribed forms or a power of attorney authorising any person to attend the meeting shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(8) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, subject to the condition that not less than three days' notice in writing of the intention so to inspect is given to the company.

Voting and  
demand for  
poll.

142. (1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under sub-section (3), be decided on a show of hands.

(2) A declaration by the chairman in pursuance of sub-section (1) that on a show of hands, a resolution has or has not been carried, or has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

(3) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the persons or person specified below, that is to say,—

(a) in the case of listed public company having a share capital, by, any member or members present in person or by proxy and holding shares in the company—

(i) which confer a power to vote on the resolution not being less than one-hundredth of the total voting power in respect of the resolution, or

(ii) on which an aggregate sum of not less than five lakh rupees has been paid up, whichever is lower;

(b) in the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy, if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present,

(c) in the case of any other company, by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution.

(4) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

- (5) A poll demanded on a question of adjournment shall be taken forthwith.
- (6) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 140) shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.
- (7) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.
- (8) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.
- (9) On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.
- (10) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers, who are members, not being officers of the company to scrutinise the votes given on the poll and to report thereon to him.
- (11) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

143. (1) Notwithstanding anything contained in this Act, no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has and has exercised any right of lien.

Restriction on exercise of voting right of members who have not paid calls, etc.

(2) A public company, or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting right on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken, or on any other ground not being a ground set out in sub-section (1).

144. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting,—

Power of Tribunal to order meeting to be called.

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

*Explanation.*—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Representation at meetings of members and creditors.

145. (1) A body corporate (whether a company within the meaning of this Act or not) may—

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

(3) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

(4) A person appointed to act as aforesaid shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers (including the right to vote by proxy) as the President or, as the case may be, the Governor could exercise as a member of the company.

Circulation of members resolutions.

146. (1) Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—

(a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub-section (1) shall be—

(a) such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates; or

(b) not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid-up an aggregate sum of not less than one lakh rupees in all.

(3) Notice of any such resolution be given, and any such statement shall be circulated to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting; and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting, and where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than two weeks before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this sub-section, notice shall be deemed to have been given, notwithstanding accidental omission, in giving it, one or more members.

(7) If default is made in complying with the provisions of this section, every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

147. (1) A resolution shall be an ordinary resolution when at a general meeting of which the notice required under this Act has been duly given, the votes cast (whether on a show of hands, or on a poll, as the case may be,) in favour of the resolution (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any cast against the resolution by members so entitled and voting.

Ordinary  
and special  
resolutions.

(2) A resolution shall be a special resolution when—

(a) it has been duly specified as such in the notice calling the general meeting or other intimation has been given to the members regarding such resolution;

(b) the notice required under this Act has been duly given of the general meeting; and

(c) the votes cast in favour of the resolution (whether on a show of hands, or on a poll, as the case may be,) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Resolutions  
requiring  
special  
notice.

148. (1) Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of intention to move the resolution shall be given to the company not less than fourteen days before the meeting at which it is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of meeting together with a deposit of ten thousand rupees which shall be refundable if the resolution is passed.

(2) The deposit made under sub-section (1) shall be forfeited if the resolution in respect of which intention is given under that sub-section is not supported by one per cent. of the total number of shareholders present and voting at the meeting.

(3) The company shall, immediately after the notice of the intention to move any such resolution has been received by it, give its members notice of the resolution in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than seven days before the meeting.

Resolutions  
passed at  
adjourned  
meetings.

149. Where a resolution is passed at an adjourned meeting of—

(a) a company;

(b) the holders of any class of shares in a company; or

(c) the Board,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Registration  
of certain  
resolutions  
and  
agreements.

150. (1) A copy of every resolution (together with a copy of the statement of material facts annexed under section 138 to the notice of the meeting in which such resolution has been passed) or agreement to which this section applies shall, within thirty days after the passing or making thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar who shall record the same.

(2) Where articles have been registered, a copy of every resolution referred to in sub-section (1) which has the effect of altering the articles and a copy of every agreement referred to in that sub-section for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every resolution or agreement referred to in sub-section (1) shall be forwarded to any member at his request.

(4) This section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board or agreement executed by a company, relating to the appointment, reappointment or renewal of the appointment, or variation of the terms of appointment, of a managing director or a whole-time director;

(d) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolutions requiring a company to be wound up voluntarily passed in pursuance of sub-section (1) of section 328; and

(f) copies of the terms and conditions of appointment of a sole selling agent appointed under section 232.

(5) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(6) If default is made in complying with sub-section (2) or sub-section (3), the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to one hundred rupees for each copy in respect of which default is made.

151. (1) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company.

Passing of  
resolutions  
by postal  
ballot.

(2) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing within a period of thirty days from the date of posting of the letter.

(3) The notice shall be sent by registered post acknowledgment due, or by any other method specified by the Central Government in this behalf, and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholders to the resolution within the said period.

(4) If a resolution is assented to by a majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Minutes of proceedings of general meetings and of Board and other meetings.

152. (1) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of the Board or of every committee of the Board, to be kept by making within thirty days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.

(2) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed—

(a) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

(b) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose.

(3) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise but may be kept on loose-leaf style and bound at such intervals as may be prescribed.

(4) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(5) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(6) In the case of a meeting of the Board or of a committee of the Board, the minutes shall also contain—

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring in, the resolution.

(7) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting—

(a) is, or could reasonably be regarded as, defamatory of any person;

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

*Explanation.*—The chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section.

(8) If a default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

(9) Minutes of meetings kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.



(10) Where minutes of proceedings of any general meeting of the company or of any meeting of the Board or of a committee of the Board have been kept in accordance with the provisions of this section, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

153. (1) The books containing the minutes of the proceedings of any general meeting of a company, shall—

Inspection  
of minute  
books.

(a) be kept at the registered office of the company, and

(b) be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so however that not less than two hours in each day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any minutes referred to in sub-section (1), on payment of such sum as may be prescribed.

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees in respect of each offence.

(4) In the case of any such refusal or a default, the Tribunal may, by order, compel an immediate inspection of the minute books or direct that the copy required shall forthwith be sent to the person requiring it.

(5) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by section 152 to be contained in the minutes of the proceedings of such meeting.

(6) If any report is circulated or advertised in contravention of sub-section (5), the company, and every officer of the company who is in a default, shall be punishable, in respect of each offence, with fine which may extend to fifty thousand rupees.

*Prohibition of simultaneous appointment of different  
categories of managerial personnel*

154. Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, appoint or employ at the same time, more than one of the following categories of managerial personnel, namely:—

(a) managing director, and

(b) manager.

Company  
not to  
appoint or  
employ  
certain  
different  
categories  
of  
managerial  
personnel  
at the same  
time.

*Managerial remuneration, etc.*

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

155. (1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 252.

(2) The percentage above shall be exclusive of any fees payable to a director for each meeting of the Board, or a committee thereof, attended by him:

Provided that such fees shall not exceed five thousand rupees or such higher sum as may be prescribed.

(3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 242 or to its manager in accordance with the provisions of sub-section (7) of section 257.

(4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the provisions of section 220, read with Schedule II, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors and its managers by way of remuneration any sum, exclusive of any fees payable to directors under sub-section (2) of section 242, except with the previous approval of the Central Government.

*Explanation.*—For the purposes of this section and sections 242 and 257, "remuneration" shall include—

(a) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(c) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child.

(5) Where any commission or other remuneration payable to any officer or employee of a company (not being a director or a manager) is fixed at a percentage of, or is otherwise based on, the net profits of the company, such profits shall be calculated in the manner set out in sections 252 and 253.

Prohibition of tax-free payments.

156. No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

*Explanation.*—In this sub-section, the expression "tax" means income-tax, payable under the Income-tax Act, 1961.

157. Save as provided in this section, any provision, whether contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Avoidance of provisions relieving liability of auditors of company.

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such auditor of any expenses incurred in good faith and in the interest of the company and against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or discharged or in connection with any application under section 442 in which relief is granted to him by Court, Regional Director or the Tribunal.

*Prevention of management by undesirable persons*

158. (1) If any person, being an undischarged insolvent,—

Restraint on undischarged insolvent and fraudulent persons to manage companies.

(a) performs any of the functions of a director, or acts as or discharges any of the functions of the manager, of any company; or

(b) directly or indirectly takes part or is concerned in the promotion, formation or management of any company,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

(2) Where—

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person—

(i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) under section 370; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud or misfeasance in relation to the company or of any breach of his duty to the company;

the Court may make an order that that person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for such period not exceeding five years as may be specified in the order.

(3) For the purposes of sub-section (2), the expression "the Court",—

(a) in relation to the making of an order against any person by virtue of clause (a) thereof, includes the Court by which he is convicted, as well as any Court having jurisdiction to wind up the company as respects which the offence was committed; and

(b) in relation to the granting of leave, means any Court having jurisdiction to wind up the company as respects which leave is sought.

(4) A person intending to apply for the making of an order under this section by the Court having jurisdiction to wind up a company shall give not less than ten days notice of his intention to the person against whom the order is sought, and at the hearing of the application, the last-mentioned person may appear and himself give evidence or call witnesses.

(5) An application for the making of an order under this section by the Court having jurisdiction to wind up a company may be made by the Company Liquidator, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company.

(6) On the hearing of any application for an order under this section by the Company Liquidator or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Company Liquidator or liquidator, the Company Liquidator or liquidator shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(7) An order may be made by virtue of sub-clause (ii) of clause (b) of sub-section (2), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(8) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

(9) The provisions of this section shall apply to every company and shall be in addition to, and without prejudice to the operation of, any other provision contained in this Act.

*Restriction on appointment of firms and bodies corporate to offices*

Restriction  
on appoint-  
ment of  
firm or  
body  
corporate  
to office or  
place of  
profit under  
a company.

159. (1) No company shall appoint or employ any firm or body corporate to or in any office or place of profit under the company, other than the office of trustee for the holders of debentures of the company, for a term exceeding five years at a time.

(2) Any office or place in a company shall be deemed to be an office or place of profit under the company, within the meaning of this section, if the person holding it obtains from the company anything by way of remuneration, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

(3) This section shall not apply to a private company, unless it is a subsidiary of a public company.

*Dividends and manner and time of payment thereof*

Dividend to  
be paid  
only out of  
profits.

160. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed, or out of the both, or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Provided that every company shall before declaring or paying dividend for any financial year, make provision, from out of the profits of that financial year or any other financial year or years, for depreciation to the extent not provided for by the company in the last ten previous financial years.

(2) For the purpose of sub-section (1), depreciation shall be provided either—

(a) at the rates specified in Schedule III; or

(b) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period; or

(c) as regards any other depreciable asset for which no rate of depreciation has been laid down by this Act or any rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case:

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

(3) The dividend declared under sub-section (1) shall be paid to the registered share-holder or to his order or to his bankers and when the dividend is payable to the bankers, no separate application need be filed by the bankers for payment of such dividend.

(4) Notwithstanding anything contained in sub-section (1), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.

(5) Where, owing to inadequacy or absence of profits in any financial year, any company proposed to declare dividend out of the accumulated profits earned by it in previous financial year and transferred by it to the reserves, such declaration of dividend shall be made only in accordance with a special resolution passed by the shareholders.

(6) No dividend shall be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares, or paying up any amount, for the time being unpaid, on any shares held by the members of the company:

Provided further that reserves created by revaluation of company's assets shall not be used by it for the issue of bonus shares.

(7) No company shall give, or no shareholder (including any proxy given by him) shall demand or accept, any gift either in cash or kind either at any general meeting or otherwise in lieu of or in addition to the dividend payable under this section.

(8) For the purposes of this section—

(a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent. of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 253;

(b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend, or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholders or the joint shareholders may in writing direct;

(c) "gift" does not include any discount coupon or any food or beverages offered at any general meeting.

(9) Where the provisions of sub-section (7) are contravened, the company, and every officer of the company who is in default, and the shareholder concerned, shall be liable to fine which may extend to ten times the value of the gift given and demanded or accepted.

Unpaid dividend to be transferred to special dividend account.

161. (1) Where a dividend has been declared by a company but has not been paid, or claimed, within thirty days from the date of the declaration to or by any shareholder entitled to such payment the company shall, within seven days from the date of expiry of the said thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be called "Unpaid Dividend Account of .....Company Limited/Company (Private) Limited".

*Explanation*—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Every company that has transferred the amount to the account referred to in sub-section (1) shall, along with the notice of annual general meeting, following immediately after such transfer and thereafter at every annual meeting until such dividend is paid or the expiry of period of seven years from such transfer, whichever is earlier, give notice to every shareholder who has not been paid or has not claimed the dividend stating therein the amount of dividend he is entitled to claim from it.

(3) If default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accumulating on such amount shall enure to the benefit of the members of the company, in proportion to the amount remaining unpaid to them.

(4) Any money transferred to the unpaid dividend account of the company in pursuance of this section, which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the company to the General Revenue Account of the Central Government and after such transfer, no claim for payment of dividend shall lie from any shareholder against the company or the Central Government.

(5) The company shall, when making any transfer under sub-section (4) to the General Revenue Account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form which shall contain all the details of the amounts transferred.

(6) If a company fails to comply with any of the requirements of this section, the company, and every officer of the company who is in a default, shall be punishable with imprisonment which may extend to two years and with fine which may extend to five thousand rupees.

(7) Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to fifty thousand rupees:

Provided that no offence shall be deemed to have been committed under this section in the following cases, namely:—

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

162. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act.—

- (a) transfer the dividend in relation to such shares to the special account referred to in section 161 unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- (b) keep in abeyance in relation to such shares, any offer of right shares under clause (a) of sub-section (1) of section 74 and may issue fully paid-up bonus shares in pursuance of proviso to sub-section (6) of section 160.
- (c) allot in relation to such shares any shares offered under clause (a) of sub-section (1) of section 74, to any director or officer of the company who shall within thirty days after the allotment dispose of and distribute proceeds thereof to the persons who are entitled thereto.

Right to dividend rights shares, a bonus shares to held in abeyance pending registration of transfer of shares

*Accounts*

Books of account to be kept by company.

163. (1) Every company shall keep at its registered office proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company;

(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account; and

(e) in the case of a company dealing in goods, the details of goods bought and sold during the year (other than goods bought and sold on retail basis), the particulars of the persons with whom such transactions were done during the financial year and the details of the stock of goods remaining at the end of the financial year:

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.

(2) Where a company has a branch office, whether in or outside India, the company shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,—

(a) if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company or branch office, as the case may be, and to explain its transactions; and

(b) if such books are not kept on accrual basis and according to the double entry system of accounting.

(4) The books of account and other books and papers shall be open to inspection by any director during business hours.

(5) The books of account of every company relating to a period of not less than eight years immediately preceding the current year, together with the vouchers relevant to any entry in such books of account, shall be preserved in good order:

Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year, together with the vouchers relevant to any entry in such books of account, shall be so preserved.



(6) If any of the persons referred to in sub-section (7) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence, unless it was committed wilfully.

(7) The persons referred to in sub-section (6) are the following, namely:—

(a) where the company has a managing director, manager, whole-time director in charge of finance, Chief Accounts Officer and all officers and other employees and agents as defined in sub-section (7) of section 195, but excluding bankers, auditors and legal advisers; and

(b) where the company has neither a managing director nor manager, every director of the company.

(8) If any person, not being a person referred to in sub-section (7), having been charged by the managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this section are complied with, makes a default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

164. (1) The books of account and other books and papers of every company shall be open to inspection during business hours—

(i) by the Director General, Regional Director or Registrar; or

(ii) by such other officer of the Central Government as may be authorised by the Director General in this behalf:

Power to  
order ins-  
pection of  
books of  
account,  
etc., of  
companies.

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof.

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company, required to be maintained under this Act or by any other law for the time being in force, in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

(i) make or cause to be made copies of books of account and other books and papers, or

(ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(i) discovery and production of books of account and other documents, at such place and at such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Director General.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default, shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company for a period of five years from such date.

Annual  
accounts.

165. (1) At every annual general meeting of a company held in pursuance of section 135, the Board shall lay before the company—

(a) a balance-sheet as at the end of the period specified in sub-section (3); and

(b) a profit and loss account for that period:

Provided that a holding company shall have the option to prepare group accounts under section 168, that is to say, the balance-sheet, profit and loss account and other related statements for itself and its subsidiary or subsidiaries, and if it does so, it shall be sufficient compliance of this sub-section if such group accounts are laid at its annual general meeting:

Provided further that nothing in the first proviso shall preclude the subsidiary or any of the subsidiaries from preparing separate balance-sheet and profit and loss account and get them approved by its directors.

(2) The annual accounts of the company shall state the derivatives, options and shares with different voting rights in the balance-sheet and they shall be categorised as quasi-equity and disclose the predominant character of the security and voting rights embedded in the security.

(3) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company at its annual general meeting instead of a profit and loss account, and all references to "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account", "the excess of income over expenditure", and "the excess of expenditure over income".

(4) The profit and loss account shall relate—

(a) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months; and

(b) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to sub-section (1) of section 133, by more than six months and the extension so granted.

(5) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months:

Provided that it may extend to eighteen months where a special permission has been granted in that behalf by the Registrar.

(6) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(7) If any person, not being a director of the company, having been charged by the Board with the duty of seeing that the provisions of this section are complied with, makes a default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

Form and  
contents  
of balance-  
sheet and  
profit and  
loss  
account.

166. (1) Every balance-sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule I, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance-sheet due regard shall be had, as far as may be, to the general instructions and accounting principles for the preparation of balance-sheet under the heading "Notes" at the end of that Part:

Provided that nothing contained in this sub-section or in the sub-section (2) shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of balance-sheet or profit and loss account has been specified in or under the Act governing such class of company.

(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule I, so far as they are applicable thereto.

(3) A statement on significant accounting policies adopted in the preparation of the balance-sheet and the profit and loss account shall be disclosed in the company's balance-sheet and where any of the accounting policies is not in conformity with accounting standards, and the particulars of departure from the accounting standards is material, the said particulars of departure shall be disclosed together with the reasons therefor and the financial effect thereof.

(4) The Central Government may, by notification, exempt any class of companies from compliance with any of the requirements in Schedule I if, in its opinion, it is necessary to grant the exemption in the public interest.

(5) Any exemption under sub-section (4) may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(6) The Central Government may, on the application, or with the consent of the Board of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance-sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

(7) The balance-sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(i) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938;

4 of 1938.

(ii) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

10 of 1949.

(iii) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by both the Indian Electricity Act, 1910, and the Electricity (Supply) Act, 1948;

9 of 1910.  
54 of 1948.

(iv) in the case of a company governed by any other special Act for the time being in force, any matters which are not required to be disclosed by that special Act; or

(v) in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule I or by virtue of a notification issued under sub-section (4) or an order issued under sub-section (6).

(8) For the purposes of this section, except where the context otherwise requires, any reference to a balance-sheet or profit and loss account shall include,—

(i) in the case of a holding company, the consolidated balance-sheet or profit and loss account where such holding company opts to prepare such consolidated balance-sheet or profit and loss account, pursuant to the first proviso to sub-section (1) of section 165; and

(ii) the notes to the balance-sheet or profit and loss account or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.

(9) If any such person as is referred to in sub-section (7) of section 163 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(10) If any person, not being a person referred to in sub-section (7) of section 163, having been charged by the managing director or manager or Board, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(11) The profit and loss account of a company shall be annexed to the balance sheet and the auditor's report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.

167. (1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be,—

- (a) a copy of the balance sheet of the subsidiary;
- (b) a copy of its profit and loss account;
- (c) a copy of the report of its Board of directors;

Balance sheet of holding company to include certain particulars as to its subsidiaries.

(d) a copy of the report of its auditors;

(e) a statement of the holding company's interest in the subsidiary as specified in sub-section (3);

(f) the statement referred to in sub-section (5), if any; and

(g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act,—

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company;

(ii) as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company.

(b) The profit and loss account and the reports of the Board and of the auditors, referred in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of this Act, for the financial year of the subsidiary referred to in clause (a).

(c) Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months.

(d) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary, the duration of which, in the aggregate, is not less than the duration of the holding company's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

(a) the company is itself the subsidiary of another body corporate; and

(b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance sheet of the holding company:—

(a) whether there has been any, and, if so, what change in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of the holding company is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance sheet of the holding company.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

(9) If any such person as is referred to in sub-section (7) of section 163 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove, that a competent and reliable person was charged with the duty of seeing that provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(10) If any person, not being a person referred to in sub-section (7) of section 163, having been charged by the managing director, manager, Board, as the case may be, with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully:

Provided further that nothing contained in this section shall apply to a holding company, where such holding company opts to prepare group accounts, for itself and its subsidiaries pursuant to the first proviso to sub-section (1) of section 165.

**Preparation  
of Consoli-  
dated  
Accounts.**

168. (1) Where a company is a holding company in relation to one or more of its subsidiaries, the directors shall, instead of preparing separate annual accounts for itself and for each of its subsidiary company, prepare annual accounts for itself and its subsidiaries (hereinafter in this section referred to the consolidated accounts) with effect from such date, the Central Government may direct, by notification to prepare the consolidated accounts and place before the annual general meeting of the holding company:

Provided that a holding company may opt to prepare accounts for itself and its subsidiaries and place them before its annual general meeting consolidated accounts so long the notification referred to in this section is issued by the Central Government:

Provided further that where a holding company chooses to prepare consolidated accounts under this sub-section, it shall be necessary for the holding company to attach the documents relating to the subsidiary or subsidiaries to its balance-sheet under section 167.

(2) The consolidated accounts shall be in the prescribed form comprising,—

(a) a consolidated balance-sheet dealing with the state of affairs of the holding company and its subsidiaries; and

(b) a consolidated profit and loss account dealing with the profit or loss of the holding company and its subsidiaries.

(3) The consolidated accounts shall, so far as may be, give a true and fair view of the state of affairs as at the end of the financial year, of all the subsidiaries included in the group accounts as a whole, so far as it concerns members of the holding company.

(4) The consolidated accounts shall comply with the provisions of Schedule I as to the form and content of the consolidated balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.



(5) If compliance with any of the above provisions of this section is inconsistent with the requirement to give a true and fair view for any reason, the directors shall depart from such provision to the extent necessary to give a true and fair view for any reason and the particulars of any such departure, the reasons for it and its effect, shall be given in a note to the accounts.

169. (1) Where the Central Government considers it desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to general meeting, that Government may, on the application or with the consent of the Board whose financial year is to be extended, direct that in the case of that company, the submission of accounts to general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted, held or made, earlier than the dates specified in the direction, notwithstanding anything to the contrary in this Act or in any other Act for the time being in force.

Financial year of holding company and subsidiary.

(2) The Central Government shall, on the application of the Board of a holding company or a holding company's subsidiary, exercise the powers conferred on that Government by sub-section (1) if it is necessary so to do, in order to secure that the end of the financial year of the subsidiary does not precede the end of the holding company's financial year by more than six months.

170. (1) A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

Rights of holding company's representative and members.

(2) The rights conferred by section 192 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they alone were members of the subsidiary.

171. (1) The balance-sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

Authentication of balance-sheet and profit and loss account.

10 1949. (2) Every balance-sheet and every profit and loss account of a banking company shall be signed by the persons specified in clause (a) or clause (b), as the case may be, of sub-section (2) of section 29 of the Banking Regulation Act, 1949; and in the case of any other company, by its manager or secretary, if any, and chief accounts officer, if any, and by not less than two directors of the company, one of whom shall be a managing director, where there is one:

Provided that in the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by the said director but in such a case, there shall be attached to the balance-sheet and profit and loss account, a statement signed by him explaining the reason for non-compliance with the provisions of this sub-section.

172. (1) Every listed public company shall appoint a whole-time accounts officer to be known as the Chief Accounts Officer, who shall either be a chartered accountant or a cost accountant and such accounts officer shall be responsible for the proper maintenance of the books of account of the company, and shall ensure proper disclosure of all required information indicated in the prospectus or any other offer document, and also ensure compliance of the provisions of this Act relating to the accounts of the company.

Chief Accounts Officer.

(2) The Chief Accounts Officer appointed under sub-section (1) shall also be responsible for the preparation of annual accounts of the company.

Board's  
report.

173. (1) There shall be attached to every balance-sheet laid before a company in general meeting, a report by its Board, with respect to—

- (a) the state of the company's affairs;
- (b) the amounts, if any, which it proposes to carry to any reserves in such balance-sheet;
- (c) the amount, if any, which it recommends should be paid by way of dividend;
- (d) ~~material~~ changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report.
- (e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- (f) the measures taken for the protection of environment in such manner as may be prescribed.

(2) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries deal with any changes which have occurred during the financial year—

- (a) in the nature of the company's business;
- (b) in the company's subsidiaries or in the nature of the business carried on by them; and
- (c) generally in the classes of business in which the company has an interest.

(3) The Board's report of every listed company shall include information with respect to the following particulars in relation to each of its divisions and business segments of which the share is ten per cent. or more of the total turnover of the company,—

- (a) review of operations during the financial year of the company to which the balance sheet relates and on the date of the report;
- (b) market conditions during the financial year of the company to which the balance sheet relates and on the date of the report; and
- (c) future prospects.

(4) The Board's report shall also include a statement in the prescribed form showing the particulars of remuneration paid during the financial year to which it relates to—

- (a) every director, including managing and whole-time director or manager of the company;

(b) every person who holds any office or place of profit in the company within the meaning of section 244; and

(c) every person who is in the employment of the company and who is a relative of any director or manager of the company and if so, the name of the director and other particulars of the employee relating to his age, experience and educational qualifications.

*Explanation.*—Remuneration has the same meaning assigned to it in the *Explanation* below section 157.

(5) The Board's report shall also include a directors' responsibility statement, indicating therein,—

(i) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(ii) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;

(iii) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; and

(iv) that the directors had prepared the annual accounts on a going concern basis.

(6) The Board shall also be bound to give fullest information and explanation in its report aforesaid, or, in cases falling under the proviso to section 178, in an addendum to that report on every reservation, qualification or adverse remark contained in the auditors' report.

(7) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company under section 171.

(8) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (5), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (7), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully:

Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to prove, that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty.

(9) If any person, not being a director, having been charged by the Board with the duty of seeing that the provisions of sub-sections (1) to (5) are complied with, makes a default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

Penalty for improper issue, circulation or publication of balance sheet or profit and loss account.

174. (a) If any copy of a balance sheet or profit and loss account which has not been signed are required by section 171 is issued, circulated or published; or

(b) if any copy of a balance sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account, (ii) any accounts, reports or statements which, by virtue of section 168, are required to be attached to the balance sheet, (iii) the auditors' report, and (iv) the Board's report referred to in section 173;

the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five thousand rupees.

Right of members to copies of balance-sheet and auditors report.

175. (1) A copy of every balance-sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed or attached, as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company, to every trustee for the holders of any debentures issued by the company, whether such trustees is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled:

Provided that—

(a) in the case of a company not having a share capital, this sub-section shall not require the sending of a copy of the documents aforesaid to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him;

(b) this sub-section shall not require a copy of the documents aforesaid to be sent—

(i) to a member, or holder of debentures, of the company, who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him;

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to have such notices sent to them, to those who are not so entitled;

(c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed to by all the members entitled to vote at the meeting.

(2) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of money by way of deposit shall, on demand, be entitled to be furnished free of cost, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub-section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees, unless it is proved that that person had already made a demand for and been furnished with a copy of the document.

(5) The Tribunal may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

176. (1) After the balance-sheet and the profit and loss account have been laid before a company at an annual general meeting, copies of such balance-sheet and profit and loss account shall be filed with the Registrar, the Director (Research and Statistics) of the Department of Company Affairs of the Central Government and the Reserve Bank of India within thirty days from the date on which the balance-sheet and the profit and loss account were so laid.

Copies of balance-sheet, etc., to be filed.

(2) Where the annual general meeting of a company for any year has not been held, the documents referred to in sub-section (1), duly signed, shall be filed with the Registrar and the officer and the authority specified in that sub-section within thirty days from the latest day on or before the annual general meeting should have been held in accordance with the provisions of this Act.

(3) In the case of a private company, copies of the balance sheet and the copies of the profit and loss account shall be filed with the Registrar separately.

(4) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, or is adjourned without adopting the balance-sheet or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

(5) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

177. (1) Where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company, and also to the company's auditor, whenever he so requires, those particulars or that information in as full a manner as possible.

Duty of officer to make disclosure of payments, etc.

(2) The particulars or information referred to in sub-section (1) may relate to payments made to any director or other person, by any other company, body corporate, firm or person.

(3) If any person knowingly makes default in performing the duty cast on him by the provisions of this section, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

Construction of references to documents annexed to accounts.

178. Any reference in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the Board's report, the auditors' report or any documents attached or required to be attached to those accounts:

Provided that any information which is required by this Act to be given in the accounts, and is allowed by it to be given in a statement annexed to the accounts, may be given in the Board's report instead of in the account; and if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only in so far as it gives the said information.

Certain companies to publish statement.

179. (1) Every company which is a limited banking company, an insurance company, or a deposit, provident, or benefit society, shall, before it commences business and also on the first Monday in May and the first Monday in November in every year during which it carries on business, make a statement in such form as may be prescribed or as near thereto as circumstances admit.

(2) A copy of the statement, together with a copy of the last audited balance-sheet laid before the members of the company, shall be displayed and until the display of the next following statement, shall be kept or displayed, in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member, and every creditor, of the company shall be entitled, on payment of such a sum as may be prescribed, to be furnished with a copy of the statement within seven days of such payment.

(4) If default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Insurance Act, 1938, as to the annual statements to be made by such company or society, apply, with or without modifications, if the company or society complies with those provisions. 4 of 1938.

#### *Audit*

Appointment and remuneration of auditors.

180. (1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within thirty days of the appointment, give intimation thereof to every auditor so appointed:

Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (3).

(2) No company shall appoint or re-appoint an auditor for more than five consecutive terms:

Provided that nothing in this sub-section shall disqualify an auditor referred to in this sub-section from being considered by the company for appointment as an auditor after the expiry of five years from the end of the last appointment.

(3) Every auditor appointed at any annual general meeting in place of a retiring auditor shall, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

(4) No company or its Board shall appoint or re-appoint any person who is in employment elsewhere or a firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of twenty-five companies or more:

Provided that in the case of a firm of auditors, the specified number of companies shall not exceed twenty-five in relation to every partner of the firm who is not in employment elsewhere:

Provided further that where any partner of the firm is also partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed twenty-five companies in the aggregate:

Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed twenty-five companies in the aggregate.

(5) At any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless—

(a) he is not qualified for re-appointment;

(b) he has given the company notice in writing of his unwillingness to be re-appointed;

(c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

(6) Where any company at an annual general meeting fails or omits to pass resolution appointing or re-appointing an auditor, or where the auditor has refused to be so appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.

(7) The company shall, within seven days of the Central Government's power under sub-section (5), becoming exercisable, give notice of that fact to that Government; and, if a company fails to give such notice, the company, and every officer of the company who is in a default, shall be punishable, with fine which may extend to five thousand rupees.

(8) The first auditor or auditors of a company shall be appointed by the Board within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination, notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(b) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(9) (a) The Board may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(10) Except as provided in the proviso to sub-section (7), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

(11) The remuneration of the auditors of a company,—

(a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be; and

(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in a general meeting may determine.



181. (1) Where it is proposed to appoint a person, other than a retiring auditor, or that a retiring auditor shall not be re-appointed, special notice shall be required for such a resolution along with a deposit of ten thousand rupees, which shall be refunded to the person giving the special notice if the resolution is passed.

Provisions  
as to  
resolutions  
for appoint-  
ing or  
removing  
auditors.

(2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto brief representation in writing to the company and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company,

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally), require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting, if on the application either of the company or any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (7) of section 180 or to the removal of any auditor or auditors under sub-section (9) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

182. (1) A person shall not be qualified for appointment as auditor of a company unless he is chartered accountant in practice:

Qualifica-  
tions and  
disquali-  
fications  
of auditors.

Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

(a) a body corporate;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment of an officer or employee of the company;

(d) a person who is indebted to the company for an amount exceeding ten thousand rupees, or who has given any guarantee or provided any security in

connection with the indebtedness of any third person to the company for an amount exceeding ten thousand rupees;

(e) a relative of a director or manager of the company;

(f) a person holding any security of the company after a period of one year from the date of commencement of this Act:

Provided that nothing in this clause shall apply to a person who holds the securities as nominee or trustee for any third person and in which the holder has no beneficial interest.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (2), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (2) and (3), he shall be deemed to have vacated his office as such.

Powers and  
duties  
of  
auditors.

183. (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the head office of the company or elsewhere and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(2) Without prejudice to the provisions of sub-section (1), the auditor shall inquire—

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(c) where the company whose principal business is the acquisition of shares, debentures or other securities or a banking company, whether so much of the assets of the company as consist of securities, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether on the basis of information and explanations obtained by the auditor under sub-section (1) he has any comments to offer on loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and papers of the company that any securities have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading;

(g) whether the bank account for unpaid dividend referred to in section 161 has been credited with the fund for full payment for unpaid dividend;

(h) whether adequate steps have been taken by the company to pay deposits which have become due for repayment of deposit to deposit holders along with reasons for non-payment of such deposits.

(3) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance-sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(ii) in the case of the profit and loss account, of the profit or loss for its financial year.

(4) The auditors' report shall also state—

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the report on the accounts of any branch office audited under section 184 by a person other than the company's auditor has been forwarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report;

(d) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;

(e) whether in his opinion,—

(i) accounting policies of the company are in conformity with the accounting standards,

(ii) there have been any deviation from the company's accounting policies; and if so, the quantum of financial implications such deviations have caused,

(iii) the accounting treatment in the balance sheet and the profit and loss account in respect of any item is inappropriate;

(f) whether the company has taken adequate steps to repay deposits due, along with interest on dividend declared.

(5) Where any of the matters referred to in clauses (i) and (ii) of sub-section (3) or in clauses (a), (b), (c), (d) and (e) of sub-section (4) is answered in the negative or with a qualification, the auditors' report shall state the reason for the answer.

(6) The Central Government may, by a general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditors' report shall also include a statement on such matters as may be specified therein:

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case. 38 of 1949.

(7) The accounts of a company shall not be deemed as not having been, and the auditors' report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if—

(a) those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and

(b) those provisions are specified in the balance sheet and profit and loss account of the company.

Audit of  
accounts of  
branch  
office of  
company.

184. (1) Where a company has a branch office, the accounts of that office shall, be audited by the company's auditor appointed under section 180 or by a person qualified for appointment as an auditor of the company under section 182, or where the branch office is situate in a country outside India, either by the company's auditor or a person qualified as aforesaid or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

(2) Where the accounts of any branch office are audited by a person other than the company's auditor the company's auditor—

(a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and

(b) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office.

(3) (a) Where a company in a general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 182, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of the country, or authorise the Board to appoint such a person in consultation with the company's auditor;

(b) the person so appointed (hereinafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same;

(c) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditors' report, deal with the same in such manner as he considers necessary;

(d) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board if so authorised by the company in general meeting.

185. Only the person appointed as an auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 182, only a partner in the firm practising in India, may sign the auditors' report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.

Signature of audit report, etc.

186. (1) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Reading and inspection of auditors' report and auditors' right to attend annual general meeting.

(2) All notices of, and other communications relating to, any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

187. If default is made by a company in complying with any of the provisions contained in sections 181, 182, 184 and 186 the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Penalty for non-compliance with certain sections.

188. If any auditors' report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 183 and 185, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to ten thousand rupees.

Penalty for non-compliance by auditor with sections 183 and 185.

189. (1) Where in the opinion of the Central Government it is necessary so to do in relation to a class of companies in respect of which a notification has been issued under clause (d) of sub-section (1) of section 163, it may, by order, direct that an audit of accounts of such class of companies shall be conducted by a Cost Accountant in such manner as may be specified in the order.

Audit of cost accounts.

(2) The provisions of sections 180 and 183 relating to the appointment, remuneration and disqualification of auditors shall, so far as may be, apply in relation to the appointment, remuneration and disqualification of cost accountants appointed under this section.

(3) The audit conducted under this section shall be in addition to the audit under section 180.

(4) An auditor appointed under this section shall have the same powers and duties in relation to the audit conducted by him as an auditor of a company under sub-section (1) of section 180 and such auditor shall make his report duly signed by him to the Board in such form and within such time as may be prescribed.

(5) An auditor appointed under section 180 as an auditor of a company shall not be appointed or re-appointed for conducting the audit the cost accounts of company under this section.

(6) If a person appointed for conducting the audit of cost accounts of a company becomes subject, after his appointment, to any of the disqualifications specified in this section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of cost accounts of the company.

(7) The Board shall include in its report under sub-section (3) of section 173 its comments on the report submitted by the auditor under this section.

(8) If default is made in complying with the provisions of this section, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

*Power of Registrar to call for information, etc.*

Power of Registrar to call for information or explanation.

190. (1) Where, on perusing any document which a company is required to submit to him under this Act, the registrar is of the opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the order.

(2) On receipt by the company of an order under sub-section (1), it shall be the duty of the company, and of all persons who are officers of the company, to furnish such information or explanation to the best of their power.

(3) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company, and of all persons who are officers of the company, to produce such books and papers.

(4) If the company, or any such person as is referred to in sub-section (2) or sub-section (3), refuses or neglects to furnish any such information or explanation or if the company or any such person refuses or neglects to produce any such books and papers,—

(a) the company and each such person shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with an additional fine which may extend to two hundred rupees for every day after the first during which the offence continues; and

(b) the Court trying the offence may, on the application of the Registrar and after notice to the company, make an order on the company for production before the Registrar of such books and papers as in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).

(5) On receipt of any writing containing the information or explanation referred to in sub-section (1), or of any book or paper produced whether in pursuance of an order of the Registrar under sub-section (3) or of an order of the Court under sub-section (4), the Registrar may annex that writing, book or paper, or where that book or paper is required by the company, any copy or extract thereof, to the document referred to in sub-section (1); and any writing or book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies, as that document is subject.

(6) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation or of the books and papers produced whether in pursuance of an order of the Registrar under sub-section (3) or of an order of the Court under sub-section (4), the Registrar is of opinion that the document

referred to in sub-section (1), together with such information or explanation or such books and papers discloses an unsatisfactory state of affairs or does not disclose a full and fair statement of any matter to which the document purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

(7) If it is represented to the Registrar on materials placed before him by any contributory or creditor or any other person interested that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein; and the provisions of sub-sections (2), (3), (4) and (6) of this section shall apply to such order.

(8) If upon inquiry the Registrar is satisfied that any representation on which he took action under sub-section (7) was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(9) The provisions of this section shall apply *mutatis mutandis* to documents which a Liquidator, or a foreign company is required to file under this Act.

191. (1) Where, upon information in his possession or otherwise, the Registrar has reasonable ground to believe that books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate, may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Regional Director having jurisdiction for an order for the seizure of such books and papers.

Seizure of documents by Registrar.

(2) After considering the application and hearing the Registrar, if necessary, the Regional Director, for reasons to be recorded in writing, may, by order, authorise the Registrar—

(a) to enter, with such assistance as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize such books and papers as he considers necessary after allowing copies of such books or papers to be taken.

(3) The Registrar shall return the books and papers seized under this section, as soon as may be, and in any case not later than the thirtieth day, after the seizure, to the company or the other body corporate or the managing director or the manager or any other person, from whose custody or power they were seized and inform the Regional Director of such return:

Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from, them or place identification marks on them or any part hereof or deal with the same in such other manner as he considers necessary.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

(5) The Central Government may prescribe such guidelines as may be considered necessary for purposes of this section.

*Investigation*

Investigation  
of the  
affairs of  
a company.

192. (1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 190, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where—

(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in the case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company's register of members,

the Tribunal may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.

(3) An application by members of a company under sub-section (2) shall be supported by such evidence as the Tribunal may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Central Government may, before appointing an inspector, require the applicants to give security, for such amount not exceeding ten thousand rupees as it may think fit, for payment of the costs of the investigation.

Investigation  
of  
company's  
affairs in  
other cases.

193. (1) Without prejudice to its powers under section 192, the Central Government—

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if—

(i) the company, by a special resolution; or

(ii) the Court, by order,

declares that affairs of the company ought to be investigated by an inspector appointed by the Central Government; and

(b) may do so if, in the opinion of the Tribunal, there are circumstances suggesting—

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards or towards any of its members; or



(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company.

(2) No firm, body corporate or other association shall be appointed as an inspector under section 192 or this section.

194. (1) If an inspector appointed under section 192 or section 193 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—

Power of inspectors to carry investigation into affairs of related companies, etc.

(a) any other body corporate which is, or has at any relevant time been the company's subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;

(b) any other body corporate which is, or has at any relevant time been, managed by any person as managing director or as manager, who is, or was at the relevant time, either the managing director or the manager of the company; or

(c) any person who is or has at any relevant time been the company's managing director or manager,

the inspector shall, subject to the provisions of sub-section (2), have power so to do and shall report on the affairs of the other body corporate or of the managing director, manager, so far as he thinks that the results of his investigations thereof are relevant to the investigation of the affairs of the first-mentioned company.

(2) In the case of any body corporate or person referred to in clause (b) of sub-section (1), the inspector shall not exercise his power of investigation into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the body corporate or person a reasonable opportunity to show cause why such approval should not be accorded.

195. (1) It shall be the duty of all officers and other employees and agents of the company, and where the affairs of any other body corporate, are investigated by virtue of section 193, of all officers and other employees and agents of such body corporate,—

Production of documents and evidence.

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the company or, as the case may be, of or relating to the other body corporate, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may, with the previous approval of the Central Government, require any body corporate other than a body corporate referred to in sub-section (1) to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books, and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (2) are furnished to the inspector, he shall return those books and papers to the body corporate concerned.

(4) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1); and

(b) with the previous approval of the Central Government, any other person, in relation to the affairs of the company, other body corporate; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(5) If any person fails without reasonable cause or refuses—

(a) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (2) to produce; or

(b) to furnish any information which it is his duty under sub-section (2) to furnish; or

(c) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (4), he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(6) Notes of any examination under sub-section (4), shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(7) In this section—

(a) the expression "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

(b) the expression "agent", in relation to any company, body corporate or person, means any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body corporate or person; and

(c) any reference to officers and other employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agents or partners, as the case may be.

196. (1) Where in the course of an investigation under sections 192, 193, 194 or 203 the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Regional Director having jurisdiction for an order for the seizure of such books and papers.

Seizure of documents by inspector.

(2) After considering the application and hearing the inspector, if necessary, the Regional Director, for reasons to be recorded in writing, may, by order, authorise the inspector—

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same after placing identification marks on them or any part thereof to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Regional Director of such return.

2 of 1974.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

(5) The Central Government may prescribe such guidelines as may be necessary for the purposes of this section.

197. (1) The inspectors may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government and any such report shall be written or printed, as the Central Government may direct.

inspectors' report.

(2) The Central Government—

(a) shall forward a copy of any report (other than an interim report) made by the inspectors to the company at its registered office, and also to any body corporate dealt with in the report by virtue of section 194;

(b) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person—

(i) who is a member of the company or other body corporate dealt with in the report by virtue of section 194;

(ii) whose interests as a creditor of the company or other body corporate aforesaid appear to the Central Government to be affected;

(c) shall, where the inspectors are appointed in pursuance of the provisions of sub-section (2) of section 192, furnish, at the request of the applicants for the investigation, a copy of the report to them;

(d) shall, where the inspectors are appointed under section 193 in pursuance of an order of the Court, furnish a copy of the report to the Court;

(e) shall, where the inspectors are appointed in pursuance of the provisions of sub-section (2) of section 192, furnish a copy of the report to the Tribunal; and

(f) may also cause the report to be published.

**Prosecution.**

198.(1) If, from any report made under section 197, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of section 194, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence; and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be (other than the accused in the proceedings), to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (7) of section 195 shall apply for the purpose of this section, as it applies for the purpose of that section.

**Application for winding up of company or an order under section 272.**

199. If any such company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 193, the Central Government may, unless the company or body corporate is already being wound up by the Court, cause to be presented to the Court by any person authorised by the Central Government in this behalf—

(a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;

(b) an application for an order under section 272; or

(c) both a petition and an application as aforesaid.

**Proceedings for recovery of damages or property.**

200. (1) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a) or clause (b) of section 194,—

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation or the management of the affairs, of such company or body corporate; or

(b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained;

the Central Government may itself bring proceedings for that purpose in the name of such company or body corporate.

(2) The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (1).

201. (1) The expenses of an incidental, to an investigation by an inspector appointed by the Central Government under section 192 or 193 shall be defrayed in the first instance by the Central Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses:—

Expenses  
of investi-  
gation.

(a) any person who, is convicted on a prosecution instituted in pursuance of section 198, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 200, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 198,—

(i) any company, body corporate, managing director or manager dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as, the Central Government otherwise directs; and

(ii) the applicants for the investigation, where the inspector was appointed in pursuance of the provisions of sub-section (2) of section 192, shall be liable to such extent, if any, as the Central Government may direct.

(2) Any amount for which a company or body corporate is liable by virtue of clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

(3) The amount of expenses, in respect of which any company, body corporate, managing director or manager is liable under clause (c) of sub-section (1) to reimburse the Central Government, shall be recoverable from that company, body corporate managing director or manager, as an arrear of land revenue.

(4) For the purposes of this section, any costs or expenses incurred by the Central Government in or in connection with proceedings brought by virtue of section 200 including expenses incurred by virtue of sub-section (2) thereof shall be treated as expenses of the investigation giving rise to the proceedings.

(5) (a) Any liability to reimburse the Central Government imposed by clauses (a) and (b) of sub-section (1) shall, subject to satisfaction of the right of the Central Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(b) Any such liability imposed by clause (a) of sub-section (1) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under clause (b) of the said sub-section.

(c) Any person liable under clause (a) or clause (b) or sub-clause (i) or sub-clause (ii) of clause (c) of sub-section (1) shall be entitled to contribution from any other person liable under the said clause or sub-clause, as the case may be, according to the amount of their respective liabilities thereunder.

(6) In so far as the expenses to be defrayed by the Central Government under this section are not recovered thereunder, they shall be paid out of moneys provided by Parliament.

Inspectors  
report to  
be  
evidence.

202. A copy of any report of any inspector or inspectors appointed under section 192 or section 193 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

Investigation  
of  
ownership  
of company.

203. (1) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons—

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.

(2) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the Tribunal, in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated in regard to the matter specified in sub-section (1).

(3) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matter connected with particular shares or debentures.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 194, 195 and 197 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate:

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonably cause to believe to be or to have been,—

(i) financially interested on the success or failure, or the apparent success or failure, of the company, or of any other body corporate whose membership or constitution is investigated with that of the company; or

(ii) able to control or materially to influence the policy of such company, body corporate as they apply in relation to officers and other employees and agents of the company of the other body corporate, as the case may be:

Provided further that the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report, or as the case may be, of the parts thereof, as respects which it is not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

204. (1) Where it appears to the Central Government, or to the Tribunal in any proceedings before it, that there is good reason to investigate the ownership of any shares in or debentures of a company or of a body corporate and that it is unnecessary to appoint an inspector for the purpose, the Central Government or the Tribunal, as the case may be, may require any person whom, it has reasonable cause to believe—

Information regarding persons having an interest in company.

(a) to be, or to have been, interested in those shares or debentures; or

(b) to act, or to have acted, in relation to those shares or debentures, as the legal adviser or agent of someone interested therein,

to give the Central Government or the Tribunal, as the case may be, any information which he has, or can reasonably be expected to obtain, as to the present and past interests in those shares or debentures, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of sub-section (1), a person shall be deemed to have an interest in a share or debenture—

(a) if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof;

(b) if his consent is necessary for the exercise of any of the rights of other persons interested therein; or

(c) if other persons interested therein can be required, or are accustomed, to exercise their rights in accordance with his directions or instructions.

(3) Any person—

(a) who fails to give any information required of him under this section; or

(b) who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

205. (1) Where it appears to the Tribunal, whether on a reference made to it by the Central Government in connection with any investigation under section 203 or section 204 or on a complaint made by any person in this behalf that there is good reason to find out the relevant facts about any shares (whether issued or to be issued) and the Tribunal is of the opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Tribunal may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding three years as may be specified in the order.

Imposition of restrictions upon shares and debentures and prohibition of transfer of shares or debentures in certain cases.

(2) So long as any shares are directed to be subject to the restrictions imposed by this sub-section—

(a) any transfer of those shares shall be void;

(b) where those shares are to be issued, they shall not be issued, and any issue thereof or any transfer of the right to be issued therewith, shall be void;

(c) no voting right shall be exercisable in respect of those shares;

(d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares or any transfer of the right to be issued therewith, shall be void; and

(e) except in a liquidation, no payment shall be made of any sums due from the company on those shares whether in respect of dividend, capital or otherwise.

(3) Where a transfer of shares in a company has taken place or the Tribunal has reasonable ground to believe that such transfer is likely to take place and as a result thereof a change in the composition of the Board is likely to take place and the Tribunal is of the opinion that any such change would be prejudicial to the public interest, it may, by order, direct that—

(a) the voting rights in respect of those shares shall not be exercisable for such period not exceeding three years as may be specified in the order;

(b) no resolution passed or action taken to effect a change in the composition of the Board before the date of the order shall have effect unless confirmed by the Tribunal; and

(c) any transfer of shares in the company during such period not exceeding three years as may be specified in the order, shall be void.

(4) The Tribunal may, by order at any time, vary or rescind any order made by it under sub-section (1) or sub-section (3).

(5) Any order made by the Tribunal under sub-section (4) shall be served on the company within fourteen days of the making of the order.

(6) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares or of any right to be issued with any such shares when to his knowledge he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (2); or

(b) votes in respect of any shares whether as holder or proxy, or appoints a proxy to vote in respect thereof, when he is aware that he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (2) or by reason of any order made under sub-section (3); or

(c) transfers any shares in contravention of any order made under clause (c) of sub-section (3); or

(d) being the holder of any shares in respect of which an order under sub-section (2) or sub-section (3) has been made, fails to give notice of the fact of their being subject to any such order to any person whom he does not know to be aware of that fact but whom he knows to be otherwise entitled to vote in respect of those shares, whether as holder or as a proxy,



shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both;

(7) Where shares in any company are issued in contravention of such of the restrictions as may be applicable to the case under sub-section (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

(8) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(9) This section shall apply in relation to debentures as it applies in relation to shares.

206. An investigation may be initiated under section 192, section 193, section 194, section 203 or section 204 notwithstanding that—

(a) an application has been made for an order under section 272; or

(b) the company has passed a special resolution for voluntary winding up,

and no investigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (a) has been made or a special resolution referred to in clause (b) has been passed.

207. Nothing in sections 190 to 205 shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by the bankers of any company, referred to in the sections aforesaid, as such bankers or financial institutions, of any information as to the affairs of any of their customers other than such company.

Voluntary winding up of company, etc., not to stop investigation proceedings.

Saving for legal advisers and bankers.

## CHAPTER II

### DIRECTORS

#### *Constitution of Board of Directors*

208. (1) Every public company shall have not less than three, and not more than fifteen directors.

(2) Every other company shall have not less than two, and not more than twelve directors.

(3) The directors of a company collectively are referred to in this Act as the "Board".

(4) Only an individual shall be appointed as a director and no body corporate, association or firm shall be appointed as the director of a company.

(5) In a default of and subject to any regulations in the articles of a company, subscribers to the memorandum who are individuals, shall be deemed to be directors of the company, until the directors are duly appointed in accordance with section 209.

Directors, their number, etc.

Appointment of directors and proportion of those who are to retire by rotation.

209. (1) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall—

(a) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(b) save as otherwise expressly provided in this Act, be appointed by the company in a general meeting.

(2) The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles, also be appointed by the company in general meeting.

Ascertainment of directors retiring by rotation and filling of vacancies.

210. (1) At the first annual general meeting of a public company, or a private company which is a subsidiary of a public company, and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.

(2) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(3) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

(4) (a) If the vacancy of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) the proviso to sub-section (2) of section 214 is applicable to the case.

*Explanation.*—In this section and in section 211, the expression "retiring director" means a director retiring by rotation.

211. (1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has the consent of one hundred shareholders or of the holders of one per cent. of the voting power and has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be, along with a deposit of ten thousand rupees which shall be forfeited if the votes cast on the resolution are less than one per cent. of the total number of votes cast on the resolution.

Right of persons other than retiring directors to stand for directorship.

(2) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in the English language and the other in the regional language of that place.

(3) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

212. Nothing in section 209 shall affect any power conferred on the Board by the articles to appoint additional directors:

Additional directors.

Provided that such additional directors shall hold office only up to the date of the next annual general meeting of the company:

Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles:

Provided also that no person who has, in an election, failed to get elected as a director, shall be appointed as an additional director till the next annual general meeting of the company.

213. (1) In the case of a public or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board at its meeting.

Filling of casual vacancies among directors.

(2) Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid.

214. (1) At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

Appointment of directors to be voted on individually.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved:

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of the director retiring by rotation in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, shall be treated as a motion for his appointment.

Sections 143, 209, 210 and 214 not to apply in relation to companies not carrying business for profit, etc.

215. Nothing contained in sections 143, 209, 210 and 214 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members.

Consent for director-ship.

216. (1) Every person other than a director retiring by rotation or otherwise or a person who has left at the office of the company a notice under section 211 signifying his candidature for the office of a director proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

(2) A person other than—

(a) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office; or

(b) an additional director or a person filling a casual vacancy in the office of a director under section 213, appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office; or

(c) a person named as a director of the company under its articles as first registered,

shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent in writing to act as such director.

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.

Option to company to adopt proportional representation for the appointment of directors.

217. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the provisions, *mutatis mutandis*, of section 213.

218. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company or as proposed director of an intended company in a prospectus issued in relation to that intended company, unless, before the registration of the articles, the publication of the prospectus, he has by himself or by his agent, authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director.

Restrictions on appointment or advertisement of director.

(2) This section shall not apply to—

(a) a company not having a share capital;

(b) a private company; or

(c) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was incorporated.

*Managing directors, etc.*

219. No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director who—

Certain persons not to be appointed managing and whole-time directors.

(a) is an undischarged insolvent, or has at any time been adjudged an insolvent;

(b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or

(c) is, or has at any time been, convicted by a Court of an offence involving moral turpitude.

220. (1) Every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of such sum as may be prescribed shall have a managing or whole-time director or a manager.

Appointment of managing or whole-time director or manager to require Government approval only in certain cases.

(2) No appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Schedule II and a return in the prescribed form is filed within sixty days from the date of such appointment.

(3) Every application seeking approval to the appointment of a managing or whole-time director or a manager shall be made to the Central Government within a period of sixty days from the date of such appointment.

(4) The Central Government shall not accord its approval to an application made under sub-section (3), if it is satisfied that—

(a) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or

(b) the terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.

(5) It shall be competent for the Central Government while according approval to an

appointment under sub-section (3) to accord approval for a period ~~which shall not exceed~~ for which the appointment is proposed to be made.

(6) If the appointment of a person as a managing or whole-time director or a manager is not approved by the Central Government under sub-section (4), the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office.

(7) Where the Central Government *suo motu* or on any information received by it is, *prima facie*, of the opinion that any appointment made under sub-section (2) without the approval of the Central Government has been made in contravention of the provisions of Schedule II, it shall be competent for the Central Government to refer the matter to the Tribunal for a decision.

(8) The Tribunal shall, on receipt of a reference under sub-section (7), issue a notice to the company, the managing or whole-time director or the manager, as the case may be, and the director or other officer responsible for complying with the requirements of Schedule II, to show cause as to why such appointment shall not be terminated and the penalties provided under sub-section (10) shall not be imposed.

(9) The Tribunal shall, if, after giving a reasonable opportunity to the company, the managing or whole-time director or the manager, or the officer who is in default, as the case may be, comes to the conclusion that the appointment has been made in contravention of the requirements of Schedule II, make an order declaring that a contravention of the requirements of the rules made in this behalf has taken place.

(10) On the making of an order by the Tribunal under sub-section (9),—

(a) the company shall be liable to a fine which may extend to five thousand rupees;

(b) every officer of the company who is in default shall be liable to a fine of ten thousand rupees; and

(c) the appointment of the managing or whole-time director or manager, as the case may be, shall be deemed to have come to an end and the person so appointed shall, in addition to being liable to pay a fine of ten thousand rupees, refund to the company the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the passing of such order.

(11) If a company contravenes the provisions of sub-section (10) or any direction given by the Tribunal under that sub-section, every officer of the company who is in default and the managing or whole-time director or the manager, as the case may be, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to five hundred rupees for every day of default.

(12) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and whose appointment has been found to be in contravention of the provisions of Schedule II, shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the Tribunal under sub-section (9).

*Explanation.*—In this section "appointment" includes re-appointment and "whole-time director" includes a director in the whole-time employment of the company.

221. (1) A person shall not be capable of being appointed director of a company, if—

Disqualifications of directors.

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;

(e) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(f) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 261 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section;

(g) he has been found guilty of contravention of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 made under the provisions of the Securities and Exchange Board of India Act, 1992 and a period of two years has not elapsed from the date of his conviction.

15 of 1992.

(2) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).

222. (1) No person shall hold office as a director in more than fifteen companies at the same time:

No person to be a director of more than fifteen companies.

Provided that where any such person also holds office as a managing director or whole-time director in any company, the limit specified in the sub-section shall be reduced to ten.

(2) Any person holding office as director in more than fifteen companies or holding office as a managing or whole-time director in one or more companies and holding office as a director in more than ten companies, immediately before the commencement of this Act shall, within sixty days from such commencement,—

(a) choose not more than fifteen or as the case may be, ten of those companies as companies in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other companies; and

(c) intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company.

(3) Any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.

(4) Where a person already holding the office of director in fifteen companies is appointed, after the commencement of this Act, as a director of any other company, the appointment—

(a) shall not take effect unless such person has, within fifteen days thereof, effectively vacated his office as director in any of the companies in which he was already a director; and

(b) shall become void immediately on the expiry of the fifteen days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.

(5) Where a person already holding the office of director in fourteen companies or less is appointed, after the commencement of this Act, as a director of other companies, making the total number of his directorships to more than fifteen, he shall choose the directorships which he wishes to continue to hold or to accept, so however that the total number of the directorships, old and new, held by him shall not exceed fifteen.

(6) None of the new appointments of director shall take effect until such choice is made; and all the new appointments shall become void if the choice is not made within fifteen days of the day on which the last of them was made.

(7) Any person who holds office, or acts, as a director of more than fifteen companies in contravention of the provisions of this section shall be punishable with fine which may extend to fifty thousand rupees in respect of each of those companies after the first fifteen.

Exclusion  
of certain  
directorships  
for the  
purposes of  
section 222.

223. (1) In calculating, for the purposes of section 222, the number of companies of which a person may be a director, the following companies shall be excluded, namely:—

(a) a private company which is neither a subsidiary nor a holding company of a public company;

(b) an unlimited company;

(c) an association not carrying on business for profit or which prohibits the payment of a dividend;

(d) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director.

(2) In making the calculation aforesaid, any company referred to in clauses (a), (b) and (c) of sub-section (1) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.

Retiring  
age of  
directors.

224. (1) No person shall be eligible to hold office as a managing director, whole-time director or other director or manager of a company, if he has attained the age of seventy-five years.

(2) Where any managing director, whole-time director or other director or manager attains the age of seventy-five years on the commencement of this Act, or at any time thereafter, then, notwithstanding anything contained in sub-section (1), he shall continue to hold such office even after such commencement until the expiry of his term.



(3) Nothing in this section shall apply to a private company unless it is a subsidiary of a public company.

*Vacation of office by directors*

225. (1) The office of a director shall become vacant if—

Vacation of  
office by  
directors.

(a) he is found to be of unsound mind by a Court of competent jurisdiction;

(b) he applies to be adjudicated an insolvent;

(c) he is adjudged an insolvent;

(d) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(e) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call;

(f) he absents himself from three consecutive meetings of the Board, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(g) he (whether by himself or by any person for his benefit or on his account), or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 233;

(h) he acts in contravention of section 235;

(i) he becomes disqualified by an order of Court under section 158;

(j) he is removed in pursuance of section 226; or

(k) having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the company.

(2) Notwithstanding anything in clauses (c), (d) and (i) of sub-section (1), the disqualification referred to in those clauses shall not take effect—

(a) for thirty days from the date of the adjudication, sentence or order;

(b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

(3) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in sub-section (1), he shall be

punishable with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees for each day on which he so functions as a director.

(4) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any ground in addition to those specified in sub-section (1).

Removal of  
directors.

226. (1) A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 275) before the expiry of his period of office:

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 217 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) Special notice shall be required of any resolution to remove a director under this section, or to appoint some other person in place of a director so removed at the meeting at which he is removed, along with a deposit of ten thousand rupees which shall be refunded if the resolution is passed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it are too late for it to do so—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board in pursuance of section 213, be filled by the appointment of another director in his stead by the meeting

at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(7) If the vacancy is not filled under sub-section (5), it may be filled up as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 213, and all the provisions of that section shall apply accordingly:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board.

(8) Nothing in this section shall be taken—

(a) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or

(b) as derogating from any power to remove a director which may exist apart from this section.

#### *Meetings of Board*

227. (1) In the case of every company, a meeting of its Board shall be held in such a manner that not more than three months shall lapse between two consecutive meetings of the Board:

Meetings of Board, notice, quorum, etc.

Provided that the Central Government may, by notification direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in that notification.

(2) Notice of every meeting of the Board of a public company along with the agenda shall be given in writing to every director for the time being in India, and at his usual address in India to every other director not less than seven days before the date of the meeting:

Provided that nothing in this sub-section shall apply to an emergent meeting for which a majority of the directors have agreed to waive such requirement.

(3) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.

(4) The quorum for a meeting of the Board shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher:

Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested present at the meeting being not less than two, shall be the quorum during such time.

(5) In this section—

(a) "total strength" means the total strength of the Board as determined in pursuance of this Act, after deducting therefrom the number of the directors, if any, whose places may be vacant at the time; and

(b) "interested director" means any director whose presence cannot, by reason of section 236, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.

(6) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(7) The provisions of sub-section (1) shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.

(8) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution:

Provided that such resolution is ratified at a subsequent meeting of the Board or the committee thereof, as the case may be, and is made part of the minutes of such meeting.

(9) Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

#### *Board's powers and restrictions thereon*

General  
powers of  
Board.

228. (1) Subject to the provisions of this Act, the Board shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in a general meeting:

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in a general meeting.

(2) No regulation made by the company in a general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(3) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

229. (1) The Board shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board, namely:—

Certain powers to be exercised by Board only at meetings.

(a) the power to make calls on shareholders in respect of money unpaid on their shares;

(b) the power to issue securities, whether issued in India or outside;

(c) the power to borrow moneys otherwise than on debentures;

(d) the power to invest the funds of the company;

(e) the power to grant loans or give guarantee or provide security in respect of loans;

(f) the power to approve the balance sheet, the profit and loss account and the director's report, or wherever required, half-yearly accounts;

(g) the power to diversify the business of the company;

(h) the power to approve amalgamation, merger, re-construction;

(i) the power to take-over a company;

(j) the power to make contributions to charitable or other funds; and

(k) the power to buy-back securities:

Provided that the Board may, by resolution passed at a meeting, delegate to any committee of directors, the managing director, the whole-time director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d), (e) and (j) to the extent specified in sub-sections (2), (3), (4) and (5) respectively, on such conditions as the Board may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, drafts, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may specify, shall not be deemed to be a borrowing of moneys or, as the case may be, making of loans by a banking company within the meaning of this section.

*Explanation 1.*—Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other bank established by or under any Act.

*Explanation 2.*—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of

money by way of overdraft or cash credit or otherwise and not the actual day to day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount outstanding at any one time up to which money may be borrowed by the delegatee.

(3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegatee and such resolution shall be passed with the consent of all the directors present at the meeting.

(4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegatee, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases and such resolution shall be passed with the consent of all the directors present at the meeting.

(5) Every resolution delegating powers referred to in clause (j) of sub-section (1) shall specify the total amount up to which contributions may be made by the delegatee, the purpose for which the contributions may be made and the maximum amount of contributions which may be made for each such purpose in individual cases.

(6) Nothing in this section shall be deemed to affect the right of the company in a general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (1).

**Audit  
Committee.**

230. (1) Every public company having a paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors.

(2) The members of the Audit Committee shall elect a chairman from amongst themselves.

(3) The annual report of the company shall disclose the composition of the Audit Committee.

(4) The auditors, the chief financial officer, the internal auditor, if any, and the director in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.

(5) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.

(7) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.

(8) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.

(9) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

231. (1) The Board of a public company shall not, except with the consent of such company in general meeting,—

Restrictions  
on powers  
of Board.

(a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking;

Provided that nothing in this clause shall apply to the creation of a charge or mortgage of the whole or substantially the whole of any undertaking in favour of a financial institution or a scheduled bank for obtaining any loan;

(b) remit, or give time for the repayment of, any debt due by a director except in the case of renewal or continuance of an advance made by the banking company to its director in the ordinary course of business;

(c) invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition of any such undertaking as is referred to in clause (a), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time;

(d) borrow moneys where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose; or

(e) contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed one lakh rupees, or five per cent. of its average net profits as determined in accordance with the provisions of sections 252 during the three financial years immediately preceding, whichever is greater.

*Explanation 1.*—Every resolution passed by the company in general meetings in relation to the exercise of power referred to in clause (d) or in clause (e) shall specify the total amount up to which money may be borrowed by the Board under clause (d) or, as the case may be, the total amount which may be contributed to charitable or any other funds in any financial year under clause (e).

*Explanation 2.*—In clause (a) of this sub-section (other than the proviso thereto), the expression "undertaking" means an undertaking in which the investment of the company exceeds five per cent. of its net-worth.

*Explanation 3.*—The expression "temporary loans" in clause (d) means loans repayable on demand or within six months from the date of the loan such as short term loan, cash credit arrangements, the discounting of bills and issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.

*Explanation 4.*—Where a portion of a financial year of the company falls before the commencement of this Act, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes of clause (e).

(2) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution; or

(b) the selling or leasing of any property of the company, where the ordinary business of the company consists of, or comprises, such selling or leasing.

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (a) of sub-section (1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.

(4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (d) of sub-section (1).

(5) No debt incurred by the company in excess of the limit imposed by clause (d) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

*Appointment of sole selling agents to require approval of company  
in a general meeting*

Appoint-  
ment of  
sole selling  
agents.

232. (1) No company shall appoint a sole selling agent for any area in India except with the previous consent of the company accorded by a special resolution in a general meeting:

Provided that where the sole selling agent has a substantial interest in the company, the particulars relating to such sole selling agent shall be disclosed as a separate item in the Board's report for every financial year in such form as may be prescribed.

(2) No company shall appoint a sole selling agent for any area outside India except with the previous consent of the Board and the particulars relating to such sole selling agent shall be disclosed as a separate item in the Board's Report for every financial year in such form as may be prescribed:

Provided that where the sole selling agent has a substantial interest in the company, such appointment shall require the previous consent of the company accorded by a special resolution in general meeting.

(3) Where there is any change in the composition or status of any sole selling agent appointed under sub-section (1) or in the interest of directors or other important terms of appointment, such sole selling agent cannot be continued as such from the date of



such change unless the same procedure for the appointment of the sole selling agent in India or as the case may be outside India, is followed for such continuance by the company.

(4) (a) Where a company has a sole selling agent (by whatever name called) for an area and it appears to the Central Government that for the purpose of determining whether or not such terms and conditions are prejudicial to the interests of the company or that the conditions specified for his appointment under sub-section (1) have not been followed; it is necessary so to do, it may require the company to furnish to it such information regarding the terms and conditions of the appointment of the sole selling agent as it considers necessary.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of the sole selling agent.

(c) If after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of the opinion that the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company or that the conditions specified for his appointment under sub-section (1) have not been followed, the Central Government may, by order, make such variations in those terms and conditions as would in its opinion make them no longer prejudicial to the interests of the company.

(d) As from such date as may be specified by the Central Government in the order aforesaid, the appointment of the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(5) (a) Where a company has more selling agents than one (by whatever name called) in any area or areas and it appears to the Central Government that for the purpose of determining whether any of those selling agents should be declared to be the sole selling agent for such area or any of such areas; it is necessary so to do, it may require the company to furnish to it such information regarding the terms and conditions of appointment of all the selling agents as it considers necessary.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of all the selling agents.

(c) If, after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of the opinion that having regard to the terms and conditions of appointment of any of the selling agents and to any other relevant factors, that selling agent is to all intents and purposes the sole selling agent for such area, although there may be one or more other selling agents of the company operating in that area, the Central Government may by order declare that selling agent to be the sole selling agent of the company for that area with effect from such date as may be specified in the order and may make suitable variations in such of the terms and conditions of appointment of that selling agent as are in the opinion of the Central Government prejudicial to the interests of the company.

(d) As from the date specified in clause (c) the appointment of the sole selling agent declared to be the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(6) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had

been in office for the unexpired residue of his term, or for three years whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period.

(7) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases, namely:—

(a) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in, the conduct of his duty as the sole selling agent;

(d) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

(8) It shall be the duty of the company—

(a) to produce to the person appointed under clause (b) of sub-section (4) or clause (b) of sub-section (5), all books and papers of, or relating to, the company which are in its custody or power; and

(b) otherwise to give to that person all assistance in connection with the investigation which the company is reasonably able to give.

(9) If a company makes default in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and with a further fine of not less than five hundred rupees for every day after the first during which such refusal or neglect continues.

(10) The provisions of this section shall, so far as may be, apply to the sole selling, or the sole purchasing or buying agents of a company.

*Explanation.*—In this section,—

(a) "appointment" includes re-appointment;

(b) "substantial interest",—

(i) in relation to an individual, means the beneficial interest held by such individual or any of his relatives, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakh rupees or five per cent. of the paid-up share capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which

exceeds five lakh rupees or five per cent. of the paid-up share capital of the company whichever is the lesser;

(iii) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is less.

*Loans to directors and contracts where directors interested*

Loans to  
managing  
directors,  
etc.

233. (1) No company (hereafter in this section referred to as "the lending company") shall, except with the previous consent of the company accorded by a special resolution in a general meeting, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by—

(a) any managing or whole-time director of the lending company, or of a company which is its holding company, or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner; and

(c) any private company of which any such director is a director or member:

Provided that no loan shall be given to any managing or whole-time director except for the purposes of meeting expenses on medical treatment, purchase or construction of residential house for the residence of such managing or whole-time director or education of his children and the amount of loan given to any managing or whole-time director in any financial year shall not exceed five times the amount of remuneration to which he is entitled in that financial year and such loan shall be subject to such conditions as may be prescribed:

Provided further that where a loan given to a managing director or whole-time director under the first proviso is outstanding, no further loan for any of the grounds specified under the first proviso, shall be given.

(2) No company shall make any loan to, or given any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, any director of the company who is not a managing or whole-time director.

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act, could not have been made, given or provided, without the previous consent of the company accorded by a special resolution, if this section had been in force at the time when the loan was made, guarantee was given or security provided, the lending company shall, within six months from such commencement or such further time not exceeding six months as may be allowed by the Registrar on application, either obtain such consent to the transaction, or enforce the re-payment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.

(4) Every person who is knowingly a party to any contravention of sub-section (1), sub-section (2) or sub-section (3) including, in particular, any person to whom the loan was made or who had taken the loan in respect of which the guarantee was given or the security was provided, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both:

Provided that where any such loan, or any loan in connection with which any such guarantee or security had been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(5) All persons who are knowingly parties to any contravention of sub-section (1), sub-section (2) or sub-section (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay by virtue of the guarantee given or the security provided by such company.

(6) The provisions of this section shall not apply to a banking company or a private company unless it is a subsidiary of a public company.

Board's  
sanction to  
be required  
for certain  
contracts  
in which  
particular  
directors  
are  
interested.

234. (1) Except with the consent of the Board, a director of the company or his relative, a firm in which a director or relative is a partner, any other partner in such a firm, or a private company of which a director is a member or director, shall not enter into any contract with the company—

(a) for the sale, purchase or lease of any property; or

(b) for the sale, purchase or supply of any goods, or services; or

(c) for under-writing the subscription of any shares in, or debentures of, the company;

(2) Nothing contained in clause (b) of sub-section (1) shall affect—

(a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or

(b) any contract or contracts between the company on the one side and any director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five lakh rupees in the aggregate in any year comprised in the period of the contract or contracts; or

(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of goods or cost of such services exceeds five lakh rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the opinion of the Board.

*Procedure, etc., where director interested*

235. (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board. Disclosure of interest by director.

(2) (a) In the case of a proposed contract or arrangement the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested.

(b) In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(3) (a) For the purpose of sub-sections (1) and (2), a general notice given to the Board by a director to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(b) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further periods of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

(c) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given.

(4) Every director who fails to comply with sub-section (1) or sub-section (2) shall be punishable with fine which may extend to fifty thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contracts or arrangements with the company.

(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company unless any such director is concerned or interested in the other company in any other manner.

(7) For the purposes of this section, a director of a subsidiary company who is an employee of the holding company and who is nominated by the holding company on the Board of the subsidiary company, shall not be deemed to be concerned or interested in any contract or arrangement between the holding company and the subsidiary company.

Interested  
director  
not to  
participate  
or vote in  
Board's  
proceedings.

236. (1) No director of a company shall, as a director at any meeting of the Board, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does not, his vote shall be void.

(2) Sub-section (1) shall not apply to—

(a) a private company which is neither a subsidiary nor a holding company of a public company;

(b) a private company which is a subsidiary of a public company, in respect of any contract or arrangement entered into, or to be entered into, by the private company with the holding company thereof;

(c) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;

(d) any contract or arrangement entered into or to be entered into with a public company, or a private company which is a subsidiary of a public company, in which the interest of the director aforesaid consists solely—

(i) in his being a director of such company and the holder of not more than shares of such number of value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1), or

(ii) in his being a member holding not more than two per cent. of its paid-up share capital;

(e) a public company, or a private company which is a subsidiary of a public company, in respect of which a notification is issued under sub-section (3), to the extent specified in the notification.

(3) In the case of a public company or a private company which is a subsidiary of a public company, if the Central Government is of the opinion that having regard to the desirability of establishing or promoting any industry, business or trade, it would not be in the public interest to apply all or any of the prohibitions contained in sub-section (1) to the company, the Central Government may, by notification, direct that that sub-section shall not apply to such company, or shall apply thereto subject to such exceptions, modifications and conditions as may be specified in the notification.

(4) Every director who knowingly contravenes the provisions of this section shall be punishable with fine which may extend to fifty thousand rupees.

237. (1) Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 234 or section 235 applies, including the following particulars to the extent they are applicable in each case, namely:—

Register of contracts, companies and firms in which directors are interested.

(a) the date of the contract or arrangement;

(b) the names of the parties thereto;

(c) the principle terms and conditions thereof;

(d) in the case of a contract to which section 234 applies or in the case of a contract or arrangement to which sub-section (2) of section 235 applies, the date on which it was placed before the Board;

(e) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(2) Particulars of every such contract or arrangement to which section 234 or, as the case may be, sub-section (2) of section 235 applies, shall be entered in the relevant register aforesaid—

(a) in the case of a contract or arrangement requiring the Board's approval, within seven days (exclusive of public holidays) of the meeting of the Board at which the contract or arrangement is approved,

(b) in the case of any other contract or arrangement, within seven days of the receipt at the registered office of the company of the particulars of such other contract or arrangement or within thirty days of the date of such other contract or arrangement whichever is later,

and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at the meeting.

(3) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate of which notice has been given by him under sub-section (3) of section 235.

(4) Nothing in sub-sections (1), (2) and (3) shall apply—

(a) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed ten thousand rupees in the aggregate in any year, or

(b) to any contract or arrangement (to which section 234 or, as the case may be, section 235 applies) by a banking company for the collection of bills in the ordinary course of its business or to any transaction referred to in clause (c) of sub-section (2) of section 234.

(5) If default is made in complying with the provisions of sub-section (1), sub-section (2) or sub-section (3), the company, and every officer of the company who is in default, shall, in respect of each default, be punishable with fine which may extend to five thousand rupees.

(6) The register aforesaid shall be kept at the registered office of the company; and it shall be open to inspection at such office, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in

the same manner, and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 132 shall apply accordingly.

*Register of directors, Chief Accounts Officer, etc.*

Register of  
directors,  
etc.

238. (1) Every company shall keep at its registered office a register of its directors, managing director, Chief Accounts Officer, manager and secretary, containing with respect to each of them the following particulars, that is to say—

(a) in the case of an individual, his present name, and surname in full, any former name or surname in full; his father's name and surname in full; or where the individual is a married woman, the husband's name and surname in full; his usual residential address; his nationality and, if that nationality is not the nationality of origin, his nationality origin, his business occupation, if any, if he holds the office of director, managing director, Chief Accounts Officer, manager or secretary in any other body corporate, the particulars of each such office held by him; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth;

(b) if any director or directors have been nominated by a body corporate, its corporate name; all the particulars referred to in clause (a) in respect of each director so nominated;

(c) all the particulars referred to in clause (b) in respect of the body corporate; and

(d) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (a) in respect of each director so nominated, and all the particulars referred to in clause (c) in respect of the firm.

*Explanation.*—For the purposes of this sub-section,—

(a) any person in accordance with whose directions or instructions, the Board is accustomed to act shall be deemed to be a director of the company;

(b) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and

(c) reference to a former name or surname do not include—

(i) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title,

(ii) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years, and

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

(2) The company shall, within a period of thirty days from the appointment of its first directors send to the Registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and where change happens among its directors, managing directors, Chief Accounts Officer, managers or secretaries, within a period of thirty days from such happening, send to the Registrar a return in duplicate in the prescribed form of such change.



(3) If default is made in complying with sub-section (1) or sub-section (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

(4) The register kept under this section shall be open to the inspection of any member of the company without charge and of any other person on payment of such fee as may be prescribed for each inspection during business hours subject to such reasonable restrictions as the company may by its articles or in a general meeting impose, so that not less than two hours in each day are allowed for inspection.

(5) If any inspection required under sub-section (4) is refused,—

(a) the company, and every officer of the company who is in a default, shall be punishable with fine which may extend to five hundred rupees; and

(b) the Tribunal may, by order, compel an immediate inspection of the register.

239. (1) Every director, managing director, whole-time director, Chief Accounts Officer, manager or secretary of any company, who is appointed to or relinquishes, the office of director, managing director, whole-time director, Chief Accounts Officer, manager or secretary of any other body corporate, shall within twenty days of his appointment to, or as the case may be, relinquishment of, such office, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of section 238; and if he fails to do so, he shall be punishable with fine which may extend to five thousand rupees.

Duty of directors, etc., to make disclosure.

(2) The provisions of sub-section (1) shall also apply to a person deemed to be a director of the company by virtue of the *Explanation* to sub-section (1) of section 238 when such person is appointed to, or relinquishes, any of the offices in the other body corporate referred to in sub-section (1).

240. (1) The Registrar shall keep a separate register or registers in which there shall be entered the particulars received by him under sub-section (2) of section 238 in respect of companies, so however that all entries in respect of each such company shall be together.

Register to be kept by Registrar and inspection thereof.

(2) The register or registers aforesaid shall be open to inspection by any member of the public at any time during office hours, on payment of the prescribed fee.

#### *Register of directors' shareholdings*

241. (1) Every company shall keep a register showing, as respects each director of the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him or in trust for him, or of which he has any right to become the holder whether on payment or not.

Register of directors shareholdings, etc.

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom, in relation to any director, by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and the price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of any interest or right in or over any shares or debentures recorded in relation to a director in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or be put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provision of this section, be kept at the registered office of the company, and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may, by its articles or in a general meeting, impose, so that not less than two hours in each day are allowed for inspection) as follows:—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Central Government or of the Registrar.

(6) In computing the fourteen days and three days mentioned in sub-section (5), any day which is a Saturday, a Sunday or a public holiday shall be disregarded.

(7) Without prejudice to the rights conferred by sub-section (5), the Central Government or the Registrar may, at any time require a copy of the said register, or any part thereof.

(8) The said register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(9) If default is made in complying with sub-section (8) the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(10) If default is made in complying with sub-section (1) or sub-section (2), or if any inspection required under this section is refused, or if any copy required thereunder is not sent within a reasonable time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to two hundred rupees for every day during which the default continues.

(11) In the case of any such refusal, the Tribunal may also, by order, compel an immediate inspection of the register.

(12) For the purposes of this section—

(a) any person in accordance with whose directions or instructions the Board is accustomed to act, shall be deemed to be a director of the company; and

(b) a director of a company, shall be deemed to hold or to have an interest or a right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that body corporate or its Board is accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate.

(13) Every director of a company and every person deemed to be a director of the company by virtue of sub-section (12) shall give notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of that section.

(14) Any such notice shall be given in writing and if it is not given at a meeting of the Board, the person giving the notice shall take all reasonable steps to secure that it is brought up and read at the meeting of the Board after it is given.

(15) Any person who fails to comply with sub-section (13) or sub-section (14) shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees, or with both.

(16) The provisions of this section shall apply to managers as they apply to directors.

#### *Remuneration of directors*

242. (1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 155 and this section, by a resolution or, if the articles so require, by a special resolution, passed by the company in a general meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

Remuneration of directors.

(2) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profit of the company, or partly by one way and partly by the other:

Provided that, except with the approval of the Central Government, such remuneration shall not exceed five per cent. of the net profit for one such director, and if there is more than one such director, ten per cent. for all of them together.

(3) A director who is neither in the whole-time employment of the company or a managing director may be paid remuneration either by way of commission if the company by a special resolution authorises such payment:

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(i) one per cent. of the net profit of the company, if the company has a managing or whole-time director, or a manager;

(ii) three per cent. of the net profit of the company, in any other case:

Provided further that the company in a general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent. or, as the case may be, three per cent. of its net profits.

(4) The net profits referred to in sub-sections (2) and (3) shall be computed in the manner laid down in section 252.

(5) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(6) The company shall not waive the recovery of any sum refundable to it under sub-section (5) unless permitted by the Central Government.

(7) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(8) The special resolution referred to in sub-section (3) shall not remain in force for a period of more than three years, but may be renewed, from time to time, by a special resolution for further periods of not more than three years at a time:

Provided that no renewal shall be effected earlier than one year from the date on which it is to come into force.

(9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

#### *Miscellaneous provisions*

Appoint-  
ment and  
term of  
office of  
alternate  
directors.

243. (1) The Board may, if so authorised by its articles or by a resolution passed by the company in a general meeting, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence for a period of not less than three months from India.

(2) An alternate director appointed under sub-section (1) shall hold office for the same period as the original director and shall vacate office if and when the original director returns to India.

(3) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate, director.

Director,  
etc., not to  
hold office  
or place of  
profit.

244. (1) Except with the consent of the company accorded by a special resolution,—

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of a director or manager, no firm in which, a director, manager or a relative of a manager, director, is a partner, no private company of which a director, a manager is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company,—

(i) under the company; or

(ii) under any subsidiary of the company,

unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company:

Provided that it shall be sufficient if the special resolution according the consent of the company is passed at a general meeting of the company held for the first time after the holding of such office or place of profit.

*Explanation.*—For the purposes of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution.

(2) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company.

(3) (a) If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the proviso to sub-section (1), and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

(b) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government.

(4) Any office or place shall be deemed to be an office or place of profit under the company within the meaning of this section,—

(a) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise;

(b) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it obtains from the company anything by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

(5) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 275, as a director of the company.

(6) This section shall not apply to a private company unless it is a subsidiary of a public company.

Restrictions on appointment of managing director and whole-time director.

245. (1) No public company shall appoint or employ any person as managing director, whole-time director or the manager of the company except as provided in sub-section (2).

(2) A public company may appoint or employ a person as its managing director or whole-time director, if he is the managing director, whole-time director or manager of one, and of not more than one, other company:

Provided that such appointment or re-appointment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

Managing director or whole-time director not to be appointed for more than five years at a time.

24 (1) No company shall, appoint or employ any individual as its managing director or whole-time director for a term exceeding five years at a time.

(2) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion:

Provided that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force.

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.

#### *Compensation for loss of office*

Compensation for loss of office not permissible except to managing or whole-time directors or to directors who are managers.

247. (1) Payment may be made by a company, except in the cases specified in sub-section (3) and subject to the limit specified in sub-section (4), to managing director, whole-time director or a director holding the office of manager or in the whole-time employment of the company, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(2) No such payment shall be made by the company to any other director.

(3) No payment shall be made to a managing or other director in pursuance of sub-section (1), in the following cases, namely:—

(a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the office of the director is vacated by virtue of sub-section (2) of section 158, or any of the clauses (a) to (k), of sub-section (1) of section 225;

(d) where the company is being wound up, whether by Court or voluntarily, provided the winding up was due to the negligence or default of the director;

(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof;

(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(4) Any payment made to a managing or other director in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold the office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any,) contributed by them.

(5) Nothing in this section shall be deemed to prohibit the payment to a managing director, or a director, or a director holding the office of manager, of any remuneration for services rendered by him to the company in any other capacity.

248. (1) Without prejudice to the provisions of sub-sections (1) and (2) of section 247, no director of a company shall, in connection with the transfer of the whole or any part of any undertaking or property of the company, receive any payment, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement—

Payment to director, etc., for loss of office, etc., in connection with transfer of undertaking or property.

(a) from such company; or

(b) from the transferee of such undertaking or property or from any other person (not being such company), unless particulars with respect to the payment proposed to be made by such transferee or person (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in a general meeting.

(2) Where a director of a company receives payment of any amount in contravention of sub-section (1), the amount shall be deemed to have been received by him in trust for company.

249. (1) No director of a company shall, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

Payment to director for loss of office, etc., in connection with transfer of shares.

(i) an offer made to the general body of shareholders;

(ii) an offer made by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company;

(iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent,

receive any payment by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement,—

(a) from such company; or

(b) except as otherwise provided in this section, from the transferees of the shares or from any other person (not being such company).

(2) In the case referred to in clause (b) of sub-section (1), it shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferees or other person (including the amount thereof) are included in, or sent with, any notice of the offer made for their shares which is given to any shareholders.

(3) If—

(a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in, or send them with, any such notice as aforesaid fails so to do,

he shall be punishable with fine which may extend to two thousand five hundred rupees.

(4) If—

(a) the requirements of sub-section (2) are not complied with in relation to any such payment as is governed by clause (b) of sub-section (1); or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting called for the purpose, of the holders of the shares to which the offer relates and other holders of shares of the same class (other than shares already held at the date of the offer by, or by a nominee for, the offeror, or where the offeror is a company, by, or by a nominee for, any subsidiary thereof) as any of the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(5) If at a meeting called for the purpose of approving any payment as required by clause (b) of sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that sub-section, be deemed to have been approved.

Supplemen-  
tary  
provisions.

250. (1) Where in proceedings for the recovery of any payment as having, by virtue of sub-section (2) of section 248 or sub-section (4) of section 249, been received by any person in trust, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or within two years after, that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which that sub-section applies.



(2) If in connection with any such transfer as is mentioned in section 248 or in section 249,—

(a) the price to be paid, to a director of the company whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(3) References in sections 247, 248 and 249 to payments made to any director of a company by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services; and for the purposes of this sub-section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 248 and 249 shall be taken to prejudice the operation of any rule or law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

#### *Directors with unlimited liability*

251. (1) In a limited company, the liability of the directors or of any director or manager may, if so provided by the memorandum, be unlimited.

Directors,  
etc., with  
unlimited  
liability  
in limited  
company.

(2) In a limited company in which the liability of a director, or manager is unlimited, the directors, and the manager of the company, and the member who proposes a person for appointment to the office of director, or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited; and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited, shall be given to him by any one of the following persons, namely, the promoters of the company, its directors, or manager, if any, and its officers.

(3) If any director, manager or proposer makes a default in adding such a statement, or if any promoter, director, manager or officer of the company makes a default in giving such a notice, he shall be punishable with fine which may extend to ten thousand rupees and shall also be liable for any damage which the person so appointed may sustain from the default; but the liability of the person appointed shall not be affected by the default.

(4) A limited company may, if so authorised by its articles, by a special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director or manager.

(5) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum:

Provided that no alteration of the memorandum making the liability of any of the officers referred to in sub-section (1) unlimited shall apply to such officer, if he was holding the office from before the date of the alteration, until the expiry of his then term, unless he has accorded his consent to his liability becoming unlimited.

## CHAPTER III

*A. Net profit, depreciation, Investments, loans, etc.*

Determina-  
tion of  
net  
profit.

252. (1) In computing for the purposes of sections 155 and 242, the net profit of a company in any financial year—

(a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3), and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(a) profit, by way of premium, on shares or debentures of the company, which are issued or sold by the company;

(b) profit on sale by the company of forfeited shares;

(c) profit of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(d) profit from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof referred to in sub-section (6), credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value.

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

(a) all the usual working charges;

(b) directors' remuneration;

(c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

(d) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

(e) interest on debentures issued by the company;

(f) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(g) interest on unsecured loans and advances;

(h) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(i) outgoing inclusive of contributions made under clause (e) of sub-section (1) of section 231;

(j) depreciation to the extent specified in section 253;

(k) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

(l) any compensation or damages to be paid by virtue of any legal liability including a liability arising from a breach of contract;

(m) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (l);

(n) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

43 of 1961. (a) income-tax or any other-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clause (d) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (l) of sub-section (4);

(c) loss of a capital nature including loss on sale of an undertaking or any of the undertakings of the company or of any part thereof not including any excess referred to in the proviso to section 253 of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value.

253. The amount of depreciation to be deducted in pursuance of clause (j) of sub-section (4) of section 252 shall be the amount calculated with reference to the written-down value of the assets as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year at the rate specified in Schedule III:

Ascertain-  
ment of  
depreciation.

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written-down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

Inter-  
corporate  
loans and  
investments.

254. (1) No company shall, directly or indirectly,—

(a) make any loan to any body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital and free reserves, or hundred per cent. of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan or investment shall be made or guarantee or security given by the Board in pursuance of sub-section (1) unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.

(3) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:—

(i) the name of the body corporate;

(ii) the amount, terms and purpose of the investment or loan or security or guarantee;

(iii) the date on which the investment or loan has been made; and

(iv) the date on which the guarantee has been given or security has been provided in connection with a loan.

(b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.

(4) The register referred to in sub-section (3) shall be kept at the registered office of the company concerned and—

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company;

and the provisions of section 132 shall apply accordingly.

(5) Nothing contained in this section shall apply to any loan made, any guarantee given or any security provided or any investment made by—

(a) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the sole object of financing industrial enterprises, or of providing infrastructural facilities;

(b) a company whose principle business is the acquisition of shares, stock, debentures or other securities;

(c) a private company, unless it is a subsidiary of a public company;

(6) If default is made in complying with the provisions of this section, other than sub-section (3), the company and every officer of the company who is in default, shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:

Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced:

Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company.

(7) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues.

*Explanation.*—For the purposes of this section,—

(a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) "free reserves" means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

255. Where any provision in the memorandum or articles of a company, or in any resolution passed in general meeting by, or by the Board, or in an agreement between the company and any other person, whether made before or after the commencement of this Act, prohibits the reconstruction of the company or its amalgamation with any other body corporate or bodies corporate, either absolutely or except on the condition that the managing director or manager of the company is appointed or re-appointed as managing director or manager of the reconstructed company or of the body corporate resulting from amalgamation, as the case may be, shall become void with effect from the commencement of this Act, or be void, as the case may be.

Condition prohibiting reconstruction or amalgamation of company.

*B. Secretary*

Certain companies to have a secretary.

256. (1) Every listed public company, and every unlisted public company having a paid up share capital of one crore rupees or more, shall employ a whole-time secretary, who shall be a Company Secretary within the meaning of the Company Secretaries Act, 1980.

36 of 1980.

(2) A company secretary in whole-time employment shall, inter alia, perform the following functions, namely:—

(a) to convene Board and general meetings as per the directions of the chairman of the Board or any director or as directed by the Tribunal as provided in the articles of association;

(b) to maintain the record of the minutes of the meetings of the Board or shareholders and to ensure that the minutes book is duly dated and signed by the chairman of the meeting;

(c) to issue certificates relating to securities and attend to applications for transfers or splitting of scrips or issue of duplicate shares;

(d) to keep in his custody the company seal and all deeds and documents relating to property and other documents vesting in the company any valuable rights;

(e) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of this Act; and

(f) attend to any other duty he may be assigned by the Board or any director or general body of shareholders.

(3) For the removal of doubts, it is hereby declared that no managing or whole-time director or manager shall by virtue of provisions of sub-section (2) be deemed to be free of any liability under any other provisions of this Act.

(4) If a company fails to comply with the provisions of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(5) Every company not required to employ a whole-time secretary under sub-section (1) and having a paid up share capital of ten lakh rupees or more shall attach with the Board's report referred to in section 173, a certificate from a secretary in whole-time practice in such form and subject to such conditions as may be prescribed as to whether the company has complied with all the provisions of this Act or not.

*C. Manager*

Provisions respecting manager.

257. (1) No company shall, after the commencement of this Act, appoint or employ, any firm, body corporate or association as its manager.

(2) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who—

(a) is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent; or

(b) suspends, or has at any time within the preceding five years suspended,

payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or

(c) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.

(3) The Central Government may, by notification, remove the disqualification incurred by any person by virtue of clause (a), clause (b) or clause (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

(4) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director or whole-time director of any other company, except as provided in sub-section (5).

(5) A company may appoint or employ a person as its manager, if he is the manager or managing director or the whole-time director of one, and not more than one, other company:

Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(6) The manager of a company may, subject to the provisions of section 155, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the "net profits" of the company calculated in the manner laid down in sections 252 and 253, or partly by the one way and partly by the other:

Provided that except with the approval of the Central Government such remuneration shall not exceed in the aggregate five per cent. of the net profits.

(7) The provisions of sections 220 and 246 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof.

(8) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

#### CHAPTER IV

##### POWERS OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF THE TRIBUNAL

258. (1) Where in the opinion of the Central Government there are circumstances suggesting—

Reference  
to Tribunal  
of cases  
against  
managerial  
personnel.

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose in a manner prejudicial to the public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the Tribunal.

(3) The person against whom a case is referred to the Tribunal under this section shall be joined as a respondent to the application.

(4) Every such application—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government. 5 of 1908.

(5) The Tribunal may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

(6) The proceedings before the Tribunal shall be summary in nature and the Tribunal shall be required to enquire into the existence of facts justifying the *prima facie* case and shall determine whether the facts and the information justify the reliefs claimed in the application.

Interim  
order by  
Tribunal.

259. (1) Where during the pendency of a case before the Tribunal it appears necessary to the Tribunal so to do in the interest of the members or creditors of the company or in the public interest, the Tribunal may on the application of the respondent or on its own motion, by an order—

(a) direct that the respondent shall not discharge any of the duties of his office until further orders of the Tribunal;

(b) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the Tribunal may specify in the order; and

(c) grant any other relief which the Tribunal may consider just and appropriate so to do.

(2) Every person appointed under clause (b) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.



260. At the conclusion of the hearing of the case, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Decision of the Tribunal.

261. (1) Notwithstanding any other provision contained in this Act, the Central Government shall by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a decision of the Tribunal under this Chapter.

Power of Central Government to remove managerial personnel on the basis of Tribunal's decision.

(2) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal:

Provided that the Central Government may, with the previous concurrence of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(3) Notwithstanding anything contained in any other provision of this Act or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(4) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.

## CHAPTER V

### COMPROMISES, ARRANGEMENTS AND RECONSTRUCTION

262. In sections 263 and 266,—

Interpretation.

(a) the expression "company" means any company liable to be wound up under this Act;

(b) the expression "arrangement" includes a reorganisation, reduction of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; or by adopting any of the methods or by reduction of the share capital referred to in clauses (a), (b) and (c) of section 82;

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

263. (1) Where a compromise or arrangement is proposed—

Power to compromise or make arrangements with creditors and members.

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the Liquidator, order a meeting of the creditors or class of creditors, or of the members or class of

members, as the case may be, to be called, held and conducted in such manner as the Court directs:

Provided that the Court may dispense with the meeting of creditors or any class of them or members or any class of them or all the creditors or all the creditors of any class or the members holding not less than one per cent. of the voting power or members in any class holding one per cent. of the total voting power, as the case may be, by an affidavit, confirm their consent to the compromise or arrangement:

Provided further that the Court may, at its discretion, waive the requirement of notices to be issued to the creditors or any class of them for such meeting so long as specific notices are sent to all the creditors and a general notice is issued by a publication in one English and one vernacular newspaper, circulating at the place where the company's registered office is located.

(2) If a special resolution is passed by the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 452, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class and all the members, or all the members of the class as the case may be, and also on the company, or in the case of a company which is being wound up, on the Liquidator and contributories of the company:

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditors' report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 192 to 207, and the like.

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) Every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid or in a case of a company not having the memorandum, every copy so issued of the instrument constituting or defining the constitution of the company shall disclose brief particulars of the order made by the Court and contained in statement to the effect that full text of the order would be available to every member or creditor requiring the same.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

(8) The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application.

264. (1) The Court while acting under the powers conferred by this Chapter, shall, if it is considered necessary to obtain expert opinion on any matter, for the determination of any question arising under this Chapter, issue Commissions consisting of such experts in the field of law, accountancy, economics, management or other subjects and refer that question to that Commission in the prescribed manner to give its expert opinion on the matter.

Power of Court to issue Commissions for obtaining expert opinion.

(2) The Court while determining any question arising under this Chapter shall take the opinion tendered by the Commission appointed under sub-section (1) into consideration.

265. (1) Where a High Court makes an order under section 263 sanctioning a compromise or an arrangement in respect of a company, it—

Power of High Court to enforce compromises and arrangements.

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 263 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 289.

266. (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 263,—

Information as to compromises or arrangements with creditors and members.

(a) with every notice calling the meeting which is sent to a creditor or member, there shall also be sent a scheme of compromise or arrangement and a statement setting forth the terms thereof and explaining its effect, and in particular, stating any material interests of the directors, managing director, or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

(b) in every notice calling the meeting which is given by the advertisement, there shall be included either such a scheme as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may inspect or obtain copies of such a scheme as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said scheme shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a scheme setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the scheme.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees; and for the purpose of this sub-section any Liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matter relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to five thousand rupees.

Provisions  
for facili-  
tating  
reconstruc-  
tion and  
amalgama-  
tion of  
companies.

267. (1) Where an application is made to the Court under section 263 for the sanctioning of a compromise or arrangement proposed between a company whether or not such a company is a scheduled undertaking within the meaning of the Industries (Development and Regulation) Act, 1951, and any such persons as are mentioned in that section, and it is shown to the Court,—

65 of 1951.

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as the "transferee company"),

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters, namely:—

(i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests or any other consideration in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(iv) the dissolution, without winding up, of any transferor company;

(v) the provision to be made for any person who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound

up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Tribunal or the Registrar that the affairs of the company have been conducted in a manner prejudicial to the interests of its members or to the public interest:

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Court unless the Company Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to the public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration and where default is made in complying with the provision of this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) In this section,—

(a) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description;

(b) "transferee company" does not include any company other than a company within the meaning of this Act, but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

(5) The Court shall give notice of every application made to it under section 263 or this section to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.

268. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder, that it desires to acquire his shares; and when such notice is given, the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority.

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless—

(a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then,—

(a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Court has not, on application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and the transferor company shall—

(a) thereupon register the transferee company as the holder of those shares, and

(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company;

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other considerations were respectively received.

(5) (a) The following provisions shall apply in relation to every offer of scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely:—

(i) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed;

(ii) every such offer shall contain a scheme by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;

(iii) every circular containing or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;

(iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (i) or which sets out such information in a manner likely to give a false impression; and

(v) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(b) Whoever issues a circular referred to in sub-clause (iii) of clause (a) which has not been registered, shall be punishable with fine which may extend to five hundred rupees.

(6) In this section,—

(a) "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract;

(b) "transferor company" and "transferee company" shall have the same meanings as in section 267.

(7) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect,—

(a) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section;

(b) with the omission of sub-section (2);

(c) with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section; and

(d) with the omission of clause (b) of sub-section (5).

Purchase of minority shareholding.

269. (1) In the event of an acquirer or person acting in concert with such acquirer becoming registered holders of ninety-five per cent. or more of the issued equity share capital of a company (including any hybrids or derivatives or shares carrying different voting rights) or, in the event of any person or group of persons becoming ninety-five per cent. majority or holding ninety-five per cent. of the issued equity share capital of a company by virtue of an amalgamation, share exchange conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company in which ninety-five per cent. or more of the issued equity share capital is held of their intention to buy the remaining equity shares of the company.

(2) The acquirer, person or group of persons holding majority in accordance with sub-section (1) may make an offer to the minority shareholders of equity shares of the company for buying the equity shares held by such shareholders at a price determined in accordance with the rules made by the Central Government.

(3) Without prejudice to the foregoing provisions of this section, the minority shareholders of the company may also require the majority shareholders to purchase the minority equity shareholding of the company at a price determined in accordance with the rules made by the Central Government.

(4) The right of requiring a purchase out either by the majority or by the minority constituted in accordance with sub-section (1), in accordance with the provisions of sub-sections (2) and (3) shall apply to all companies and the rules referred to therein shall extend to private companies and unlisted public companies for non-marketable equity shares.

(5) In the event of a purchase under this section, whether wholly or partially, the company shall be constituted as a transfer agent for receiving and paying the price to the shareholder delivering the shares, and as agent for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(6) In the absence of a physical delivery of shares, in the event of a purchase at the instance of the majority, the share certificates may be cancelled and the company shall be authorised to issue duplicate share certificates and completing the transfer in accordance with law and make payment of the price out of any deposit by the majority in advance to the minority by despatch of such payment under registered post acknowledgment due to their last known address.

(7) In the event of a majority shareholder requiring a full purchase and making payment of price, by deposit with the company, for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholder to make an offer for sale to minority equity shareholding, shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

Power of Central Government to provide for amalgamation of companies in the public interest.

270. (1) Where the Central Government is satisfied that it is essential in the public interest that two or more Government companies or one or more of the departments of the Government and a Government company should amalgamate, then, notwithstanding anything contained in sections 267 and 268 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies or departments into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company or department and may also contain such consequential, incidental and supplemental



provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies or departments before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette.

(4) The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(5) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(6) No order shall be made under this section, unless—

(a) a copy of the proposed order has been sent in draft to each of the companies or departments concerned;

(b) the time for preferring an appeal under sub-section (5) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and

(c) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(7) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

271. The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission, of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, of the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.

Preservation  
of books  
and papers  
of amalga-  
mated  
company.

## CHAPTER VI

## PREVENTION OF OPPRESSION AND MISMANAGEMENT

*A. Powers of Tribunal*

Relief in cases of oppression and mismanagement.

272. (1) Any member of a company who has a complaint,—

(a) that the affairs of the company are being conducted in a manner prejudicial to the public interest; or in a manner oppressive to, member or members (including any one or more of themselves); or

(b) that the affairs of a company are being conducted in a manner prejudicial to the interests of the company; or

(c) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company,

may apply to the Tribunal for an order under this section, provided such members have a right so to apply, under sub-section (4).

(2) If, on any application made under clause (a) of sub-section (1), the Tribunal is of the opinion—

(a) that the company's affairs are being conducted in a manner prejudicial to the public interest or in a manner oppressive or prejudicial to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(3) If, on any application made under clause (b) or clause (c) of sub-section (1), the Tribunal is of the opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, as the case may be, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

(4) The following members of a company shall have the right to apply under this section, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(5) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(6) Where any members of a company are entitled to make an application by virtue of sub-section (4), any one or more of them having obtained the consent in such form as may be prescribed, may make the application on behalf and for the benefit of all of them.

(7) The Central Government may, if in its opinion that circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Tribunal under this section, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (4) are not fulfilled.

(8) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Tribunal dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

(9) The Tribunal shall give notice of every application made to it under this section to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing final order.

(10) Without prejudice to the generality of the powers of the Tribunal under this section, any order under sub-section (2) or sub-section (3) may provide for—

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:—

(i) the managing director,

(ii) any other director, and

(iii) the manager,

upon such terms and conditions as may, in the opinion of the Tribunal be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or

other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) appointment of receiver;

(h) any other matter for which in the opinion of the Tribunal it is just and equitable that provision should be made.

(11) Pending the making by it of a final order under this section the Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

(12) If any person, managing director or any other director, or manager of a company, who has not been impleaded as a respondent to any application under this section applies to be added as a respondent thereto, the Tribunal shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

(13) In relation to an application under this section and sections 367 to 371, shall apply in such form as may be prescribed.

(14) The Central Government may also itself apply to the Tribunal for an order under this section or cause an application to be made to the Tribunal for such an order by any person authorised by it in this behalf.

Effect of  
alteration  
of memo-  
randum or  
articles  
of company  
by order  
under  
section  
272.

273. (1) Where an order under section 272 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the Tribunal any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering or giving leave to alter a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

Consequen-  
ces of  
termination  
or modifi-  
cation of  
certain  
agreements.

274. (1) Where an order made under section 272 terminates, sets aside, or modifies an agreement such as is referred to in clause (d) or clause (e) of sub-section (10) of that section,—

(a) the order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise;

(b) no managing or other director, or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or

setting aside the agreement, without the leave of the Tribunal be appointed or act, as the managing or other director, or manager of the company.

(2) (a) Any person who knowingly acts as a managing or other director, or manager of a company in contravention of clause (b) of sub-section (1); and

(b) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention,

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(3) No leave shall be granted under clause (b) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

#### *B. Powers of Central Government*

275. (1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Tribunal may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Tribunal on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to the public interest:

**Powers of Government to prevent oppression or mismanagement.**

Provided that in lieu of passing an order as aforesaid, the Tribunal may, if the company has not availed itself of the option given to it under section 217, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Tribunal.

(2) In case the Tribunal passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Tribunal may, by order, specify as being necessary to effectively safeguard the interests, of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.

(3) For the purposes of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or sub-section (2) shall not be taken into account.

(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.

(5) No change in the Board made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as

such director or additional director holds office, have effect unless confirmed by the Tribunal.

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.

Power of Tribunal to prevent change in Board of directors likely to affect company prejudicially.

276. (1) Where a complaint is made to the Tribunal by the managing director or any other director, or the manager, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the Tribunal may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do, by order, direct that no resolution passed or that may be passed or no action taken or that may be taken to effect a change in the Board after the date of the complaint shall have effect unless confirmed by the Tribunal; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in a general meeting of the company or by the Board.

(2) The Tribunal shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

## CHAPTER VII

### MISCELLANEOUS PROVISIONS

#### *Contracts where company is undisclosed principal*

Contracts by agents of company in which company is undisclosed principal.

277. (1) Every person, being the manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.

(2) Every such person who enters into a contract as aforesaid shall forthwith deliver the memorandum to the company and send copies thereof to each of the directors; and such memorandum shall be filed in the office of the company and laid before the Board of directors at its next meeting.

(3) If default is made in complying with the requirements of this section,—

(a) the contract shall, at the option of the company, be voidable as against the company; and

(b) the person who enters into the contract, or every officer of the company who is in default, as the case may be, shall be punishable with fine which may extend to two thousand rupees.

*Employees' securities and provident funds*

278. (1) Any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit—

Employees securities to be deposited in post office savings bank or Scheduled Bank.

(a) in a post office savings bank account, or

(b) in a special account to be opened by the company for the purpose or in a scheduled bank, or

(c) where the company itself is a scheduled bank, in a special account to be opened by it for the purpose either with itself or in any other scheduled bank.

(2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.

(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be a security within the meaning of this section, and the moneys themselves shall accordingly be deposited as provided in sub-section (1).

279. (1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either—

Provisions applicable to provident funds of employees.

(a) be deposited—

(i) in a post office savings bank account, or

(ii) in a special account to be opened by the company for the purpose in a scheduled bank, or

(iii) where the company itself is a Scheduled Bank, in a special account to be opened by it for the purpose either with itself or in any other scheduled bank; or

(b) be invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882.

2 of 1882.

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (38) of section 2 of the Income-tax Act, 1961.

43 of 1961.

(4) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contribution of the employees concerned and pay such contribution as well as its own contributions, if any, to the trustees within fifteen days from the date of collection; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

Right of employee to see bank's receipt for moneys or securities referred to in section 278 or 279.

280. An employee shall be entitled, on request made in this behalf to the company, or to the trustees referred to in sub-section (4) of section 279, as the case may be, to see the bank's receipt for any money or security such as is referred to in section 278 or section 279.

Penalty for contravention of section 278, 279 or 280.

281. Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 279 who, knowingly, contravenes, or authorises or permits the contravention of, the provisions of section 278, section 279 or section 280, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees.

## PART VII

### WINDING UP

#### CHAPTER I

##### PRELIMINARY

##### *Modes of winding up*

Modes of winding up.

282. (1) The winding up of a company may be either—

(a) by the Court; or

(b) voluntary.

(2) The provisions of this Act shall, unless otherwise stated, apply to the winding up of a company in any of the above modes.

##### *Contributories*

Definition of a "contributory".

283. (1) The expression "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and includes the holder of any shares which are fully paid-up.

(2) For the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are deemed to be contributories shall include any person alleged to be a contributory.



(3) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

284. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 285 and subject also to the following qualifications, namely:—

Liability  
as contributories of  
present and  
past  
members.

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) no past member shall be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract where the liability of individual members is restricted, or where the funds of the company are alone made liable in respect of the policy or contract;

(f) as between the claims of any creditor, who is not a present or past member of the company and whose dues are in the nature of a debt and interest therein, and any claim of past or present member of the company due to him as such, by way of dividends, profits or otherwise, the latter shall not be treated as a debt of the company payable to such a member but no such sum shall be taken into account for the purposes of final adjustment of the rights of the contributories among themselves, after all other claims are made;

(g) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, to contribute in respect of the sums unpaid on any shares held by him, as if the company were a company limited by shares, and also in respect of the amount guaranteed or undertaken to be contributed by him to the assets of the company in the event of its being wound up.

285. In the winding up of a limited company, any director or manager, whether past or present, whose liability is unlimited under the provisions of this Act shall, in addition to his liability to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company:

Obligation  
of director  
and  
managers  
whose  
liability  
is  
unlimited.

Provided that—

(a) a past director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or more before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution, unless the Court deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Contribu-  
tories in  
case of  
death of  
member.

286. (1) If a contributory dies either before or after he has been qualified to be as such, his legal representative shall be liable in due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment out of the money due.

(3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

Contribu-  
tories in  
case of  
insolvency  
of member.

287. If a contributory is adjudged insolvent, either before or after he has been qualified as such—

(a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Contribu-  
tories in  
case of  
winding up  
of a body  
corporate  
which is a  
member.

288. If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories—

(a) the Liquidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and hence may be called upon to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company; and

(b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

## CHAPTER II

### *Winding up by the court*

Cases in  
which  
company  
may be  
wound up  
by Court.

289. A company may be wound up by the Court—

(a) if the company has a paid-up share capital of ten crore rupees or more and has, by a special resolution, resolved that the company be wound up by the Court;

(b) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(c) if the company is unable to pay its debts as defined in section 290;

1 of 1986.

(d) if the company is recommended for winding up by the Board for Industrial and Financial Re-construction or the Appellate Authority for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985;

(e) if the Court is of opinion that it is just and equitable that the company should be wound up.

290. A company shall be deemed to be unable to pay its debts—

Company when deemed unable to pay its debts.

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for thirty days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

51 of 1993.

(b) if execution or other process issued on a decree or order of any Court or any Debt Recovery Tribunal or its Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

291. (1) A petition to the Court for winding up of a company shall be presented, subject to the provisions of section 286, section 287 and this section—

Persons who can petition for winding up.

(a) by the company subject to sub-section (2); or

(b) by any creditor or creditors, including any contingent or prospective creditor or creditors, secured creditors or otherwise; holders of the company's debentures or their trustee; or

(c) by any contributory or contributories subject to sub-section (3); or

(d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately; or

(e) by the Registrar subject to sub-section (5); or

(f) by any person authorised by the Central Government in any case falling under section 199.

(2) A company shall not present a petition for winding up under this section unless it is accompanied by a statement of affairs of the company in the form and manner prescribed under clause (f) of section 307.

(3) A contributory shall not be entitled to present a petition for winding up a company unless—

(a) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two; or.

(b) half the number or more of the shares in respect of which he is a contributory, whether either originally allotted to him and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder.

(4) The leave of the Court shall be obtained before admitting a petition for winding up of a company by any contingent or prospective creditor, and such leave shall not be granted,—

(a) unless, in the opinion of the Court, there is a *prima facie* case for winding up of the company;

(b) until such security for cost has been given as the Court thinks reasonable.

(5) Except in the case where he is authorised in pursuance of clause (f) of sub-section (1), the Registrar shall be entitled to present a petition for winding up of a company only on the grounds specified in clauses (b) and (c) of section 289:

Provided that the Registrar shall not present a petition on the ground specified in clause (c) of section 289 unless it appears to him either from the financial condition of the company as disclosed in its balance sheet, or from the report of a special auditor appointed under section 412 or an inspector appointed under section 192 or section 193 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid, and that the Central Government will not accord its sanction unless the company has been first afforded an opportunity of making its representation to the Registrar, if any.

Right to  
present  
application  
for winding  
up where  
the  
company is  
in the  
process of  
being  
wound up  
voluntarily.

292. (1) Where a company is being wound up voluntarily, a petition for its winding up by the Court may be presented by—

(a) any person authorised to do so under section 291 subject to the provisions of that section; or

(b) the Company Liquidator.

(2) The Court shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.

Jurisdiction  
of winding  
up Court  
and transfer  
of winding  
up proceed-  
ings.

293. (1) From the date of commencement of this Act, "Court" for the purposes of winding up of a company shall mean the High Court having jurisdiction in the State in which the registered office of the company is situated.

(2) The winding up proceedings of a company pending in the District Courts or subordinate Courts on the date of commencement of this Act shall be transferred to the High Court.

(3) The Central Government may, at any time after such commencement, by notification, specify that the powers of the Court for the purposes of winding up of a company shall be exercised by the Tribunal on and from the date specified in the notification:

Provided that the winding up proceedings of companies pending in the High Courts on the dates specified in notification shall be transferred to the Tribunal.

294. (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commence-  
ment of  
winding up.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

295. (1) On hearing a winding up petition, the Court may—

Powers of  
Court on  
hearing  
petition.

(a) dismiss it, with or without costs; or

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order that it thinks fit; or

(d) make an order for winding up of the company with or without costs, or any other order that it thinks fit:

Provided that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Any adjournment under clause (b) of sub-section (1) shall not be more than fifteen working days from the date of adjournment.

(3) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy:

Provided that the Court shall give reasons for forming such an opinion.

(4) Where the Court, on a petition presented by any creditor, contributory or the Company Liquidator, considers it just and reasonable that the winding up order is revoked, it may do so, subject to such directions as may be deemed necessary, after giving an opportunity of hearing to the petitioner in winding up petition.

296. At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or any creditor or contributory, may,—

Power of  
Court to  
stay or  
restrain  
proceedings  
against  
company.

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the appropriate bench of Court, having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceedings,

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit:

Provided that there can be no stay of proceeding of any suit instituted by any secured creditor either before the presentation of a winding up petition or thereafter but before a winding up order has been made.

*Company Liquidator*

Appoint-  
ment of  
Company  
Liquidator.

**297. (1)** For the purposes of this Act, so far as it relates to the winding up of a company by the Court, there shall be a Company Liquidator who—

(a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these disciplines, which the Central Government shall constitute for each of the High Courts; or

(b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or

(c) may be a whole-time or a part-time officer appointed by the Central Government:

Provided that prior to finalising the appointment of the Company Liquidator, the Court may give due regard to the views or opinion of the secured creditors.

**(2)** The terms and conditions for the appointment of the Company Liquidator and the remuneration payable to him shall be—

(a) approved by the Court for those covered by clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent. on the realisation of sale of assets;

(b) approved by the Central Government for those covered by clause (c) of sub-section (1) on the lines specified in the rules made by the Central Government.

**(3)** Where the Company Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Company Liquidators or Assistant Company Liquidators to assist the Company Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Company Liquidator and the remuneration payable to him shall also be specified in the rules made by the Central Government from time to time.

**(4)** All references to the Company Liquidator in this Act shall be construed as reference to the Company Liquidator specified in sub-section (1), or to the Deputy Company Liquidator or Assistant Company Liquidator referred to in sub-section (3).

Company  
Liquidator  
to be  
liquidator.

**298. (1)** On a winding up order being made in respect of a company, the Company Liquidator shall become the liquidator of such company.

**(2)** A liquidator appointed under sub-section (1) for a company shall be described as the "Company Liquidator" of the particular company in respect of which the appointment has been made.

Appoint-  
ment of  
provisional  
liquidator.

**299. (1)** At any time after the presentation of a winding up petition and before the making of a winding up order, the Court may appoint the Company Liquidator to be liquidator provisionally.

(2) Where a provisional Liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(3) On a winding up order being made, the provisional liquidator shall cease to hold office as such, and shall become the liquidator, and liquidator's appointment shall relate back to the date of his appointment as provisional liquidator of the company.

300. (1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose.

General provisions as to Liquidators.

(2) Where the Company Liquidator becomes or acts as Liquidator, the fee or remuneration payable under sub-section (2) of section 297 shall be treated as a first charge on the realisation of the sale of assets of the company, and shall be paid to the liquidator or to the Central Government, as the case may be.

301. A receiver shall not be appointed in respect of assets in the hands of a Liquidator except by, or with the leave of, the Court.

Receiver not to be appointed of assets with Liquidator.

302. (1) The Liquidator on winding up by the Court shall have following power with the sanction of the Court,—

Powers and functions of Company Liquidator.

(a) to take into his custody or under his control such property, assets, actionable claims and books of account, to which the company is entitled to or appears to be entitled to, within a period of twenty days from the date of winding up order:

Provided that the Liquidator or Provisional Liquidator may request the Chief Presidency Magistrate or District Magistrate, as the case may be, within whose jurisdiction such property, assets, actionable claims and books of account of the company may be found for assistance in taking possession of the property, assets, actionable claims, books of account and the Chief Presidency Magistrate or the District Magistrate may, after giving reasonable opportunity of being heard to the concerned parties, take possession of such property, effects, actionable claims or books of account and deliver possession thereof to the Liquidator or the Provisional Liquidator;

(b) to appoint, as the case may be, valuer, Chartered Surveyor or a Chartered Accountant to value the company's assets within fifteen days after taking into custody of property, asset, actionable claim or books of account referred to in sub-clause (a), subject to such terms and conditions specified in the winding up order;

(c) to give an advertisement inviting bids for sale of assets of the company within fifteen days from the date of receiving valuation report from the valuer, Chartered Surveyor, Chartered Accountant referred to in clause (b).

(2) Any bidder shall deposit the bid with Liquidator or Provisional Liquidator, as the case may be, within forty-five days from the date of advertisement and the Liquidator or Provisional Liquidator shall permit inspection of property and assets referred to in sub-clause (a) of sub-section (1) for five days before closing date of the bid:

Provided that such bid may be withdrawn within three days before the last day of closing the bid.

(3) The advertisement referred to in clause (c) of sub-section (1) shall contain the following details, namely:—

(i) the name of the company, address of its registered office, addresses of its branches, factories and plants, if any, and the address where the assets may be inspected;

(ii) the last date for submitting bids, which shall not normally exceed ninety days from the date of the advertisement;

(iii) the time during which the premises of the company are open for inspection, which shall be normally permitted upto five days before the last date of submitting sealed bids;

(iv) the last date for withdrawing any bid which may be extended upto three days before the last date of submitting sealed bids;

(v) the financial guarantee which shall be one-half of the value of the bid;

(vi) validity period of the bids, which shall normally not exceed ninety days from the last date of submitting bids;

(vii) the place and date for public opening of the bids;

(viii) any other terms and conditions of sale by bids.

(4) Where the Court has made a winding up order and appointed the Official Liquidator or Provisional Liquidator, as the case may be, there shall be made out and submitted to such Liquidator a statement by the Director, Manager, Secretary or the Chief Accounts Officer of the company or by such other persons as the Official Liquidator may require, within twenty-one days, to submit a statement duly verified by an Affidavit indicating therein the following particulars, namely:—

(i) the assets of the company, indicating separately the cash and bank balance, and negotiable securities held by the company and such other assets as may be prescribed;

(ii) its debts and liabilities;

(iii) the names and addresses of the creditors, indicating separately the amount of secured and unsecured debts, their value and dates on which they were given;

(iv) the debts due to the company and the names and address of the persons from whom such debts are due, and the amount likely to be realised in respect of such debts;

(v) any other information which may be prescribed.

(5) The costs, if any, in preparing any statement or furnishing any information required under sub-section (3) may be paid by the Liquidator and, if so, such cost shall be treated as first charge on the sale proceeds of the assets of the company.

(6) Where the Director, Managing Director, Manager, Secretary or Chief Accounts Officer of the company or such of the persons referred to in sub-section (3) fail to furnish the statement of affairs of the company required under sub-section (3) and information in connection therewith, every officer who is in default shall be liable to a fine upto rupees one thousand per day for the delay upto five working days and thereafter the fine shall increase by one thousand rupees per day for every day upto



twenty-five days.

(7) If the director, managing director, manager, secretary or Chief Accounts Officer or such of the persons referred to in sub-section (5) fail to furnish the statement or information required under sub-section (3) within twenty-five days, every such officer in default shall be punishable with imprisonment which may extend to two years or with fine or with both.

(8) Without prejudice to the powers of the Liquidators specified in sub-sections (1) to (6), the Liquidator in a winding up by the Court shall have power with sanction of the Court,—

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;

(d) to raise on the security of the assets of the company any money requisite;

(e) to sell the company or any of its undertakings or divisions as a going concern;

(f) to search for and seize books and papers of the company;

(g) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(9) The Liquidator in a winding up by the Court shall have power—

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(ii) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;

(iii) to prove, rank and claim in the solvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(iv) to draw, accept, make and endorse any bill of exchange, *hundi* or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, *hundi* or promissory note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(v) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name and any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(vi) to appoint an agent to do any business which the liquidator is unable to do himself;

(vii) to summon meetings of creditors or contributories for the purpose of ascertaining facts, resolving disputes and facilitating the process of winding up.

(10) Notwithstanding anything contained in this section, the Court may, by order, provide that the powers referred to in sub-section (1) may be exercised by the Liquidator without the sanction or intervention of the Court, subject to the provision that the exercise of such powers by the Liquidator shall be subject to the control of the Court.

Exclusion of certain time in computing periods of limitation.

303. Notwithstanding anything in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.

9 of 1963.

Provision for legal assistance to Liquidator.

304. The Liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties.

Control of Central Government over Liquidators who are officers of the Central Government.

305. In case the Liquidator is an officer of the Central Government,—

(a) the Central Government shall take cognizance of the conduct of such Liquidators of companies which are being wound up by the Court, and, if such a Liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act or by the Companies Act, 1956, the rules thereunder, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall inquire into the matter, and take such action thereon as it may think expedient;

1 of 1956.

(b) the Central Government may at any time require any such Liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up;

(c) the Central Government may also direct a local investigation to be made of the books and vouchers of such liquidators.

Control of Court over Liquidators who are not officers of Central Government.

306. Where the Liquidators are not officers of the Central Government, the control exercisable by the Central Government under section 305 shall be exercised by the Court.

*Winding up order*

307. In the winding up order of a company, the Court shall also—

Form and content of winding up order.

(a) give the name of the Company Liquidator appointed by it and the terms and conditions of his appointment and the remuneration or fee payable to such Liquidator;

(b) specify the terms and conditions of appointment of valuer, chartered surveyor or chartered accountant to value the company's assets within such period not exceeding fifteen days after taking custody or control of all properties, effect, books of account or other actionable claims to which the company is, or appears to be entitled to, as may be specified in the order which shall not be after fifteen working days from the date of such custody or control.

308. Concurrently, with the issue of the advertisement for sale in clause (e) of section 302, the Company Liquidator shall issue another advertisement in two national daily newspapers and an appropriate regional daily newspaper, which shall state that a winding up order has been passed on the company and shall invite creditors to submit to the Company Liquidator their proof of claims, and the last date for such submission which shall normally be sixty days from the date of the advertisement, after which no further claims shall be entertained.

Advertisement for submitting proof of debt claims.

309. (1) A report or reports on the estimated value of the various assets of and claims due to the company shall be submitted by the Company Liquidator to the Court within a period not exceeding sixty days from the date on which he took possession or custody of the properties, assets and books of the company; and such a report or reports shall be confidential, and only be available to the Company Liquidator or the Court, and shall form the basis for fixing reserve price for such assets and claims for the purpose of the sealed bid auction.

Valuation report and financial report by Company Liquidator.

(2) In addition to the requirement in sub-section (1), the Company Liquidator shall prepare and submit to the Court, within a period not exceeding forty-five days from the date of possession or custody of the company's assets, properties and books of account, a provisional financial statement of the company, which shall contain, amongst other things,—

(a) the amount of capital issued, subscribed and paid-up;

(b) the estimated value of assets, giving separately particulars of—

(i) cash and negotiable securities,

(ii) debts due from contributories,

(iii) debts due to the company and the names and addresses of the persons from whom they are due, and the amount likely to be realised on this account,

(iv) movable and immovable properties belonging to the company, and

(v) unpaid calls;

(c) the estimated value of the liabilities, giving separately particulars of—

(i) secured debt of the company and the nature and value of the securities in respect of such debt,

(ii) unsecured debt of the company, and

(iii) other liabilities, including prospective, contingent and contested liabilities.

(3) The report under sub-section (2) or any subsequent report may contain the opinion of the Company Liquidator as to whether any fraud was committed by any person during the promotion of the company or in its course of business or any other matter which he considers expedient to bring to the notice of the Court; and if the Company Liquidator states in any report that in his opinion fraud has been committed, the Court shall have powers to order public examination of the concerned persons under section 322:

Provided that such a procedure of public examination under section 322 does not interfere with the time-bound process of sale of assets.

Books to be kept by the Company Liquidator and audit of his accounts.

310. (1) The Company Liquidator shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceeding at meetings and of such other matters as may be prescribed, and he shall, at such times as may be prescribed but not less than twice a year, present to the Court, in prescribed form, an account of his receipts and expenses as Liquidator.

(2) Any creditor or contributory may, subject to the control of the Court inspect such books personally or by his agent.

Manner of conducting the sale of assets through sealed-bid auction.

311. Subject to the provisions of section 302, the procedure for conducting a sealed-bid auction for the sale of assets of the company which is being wound up shall be as follows, namely:—

(a) The bids shall be opened on the day and at the place specified in the advertisement, be sorted and ranked according to the type of asset that has been bid for, with bids for purchasing all assets as a whole being treated as a single class of assets;

(b) The bids which are less than the reserved value of the assets as estimated in the valuation report or reports shall be rejected;

(c) Subject to clause (b), if the highest bid for purchasing all the assets and claims of the company as a whole exceeds or is equal to the sum of the highest bid among the bids for the parts, then the assets and claims of the company shall be sold as a whole to the highest bidder;

(d) Subject to clause (b), if clause (c) does not hold, then the assets of the company shall be sold in part to the highest bidder for each type of asset;

(e) If all bids for any type of assets are less than its reserve price, then such assets shall be sold through public auction;

(f) The payment for the winning bids shall be deposited either with the Liquidator or to a specified account in a scheduled bank or the Reserve Bank of India as notified by the Liquidator within ten days from the date of conclusion of the auction;

(g) Failing to abide by the condition in clause (f) above shall cause the Liquidator to enforce the guarantee which accompanied the sealed bid as in section 307, and shall cause the Liquidator to offer to sell such assets to their immediately highest bidder at that bidder's price;

(h) There shall be no re-advertisement and re-auction, unless the Court has reason

to believe that there was either mis-statements in the advertisement or that the procedures laid down under the Act were not followed.

312. Upon completion of sale of assets and upon the proof of payment by the buyer, the Court shall confer on such buyer by virtue of the order of sanction by the Court or by any other lawful process, appropriate legal ownership rights by transferring such rights and documents therefore, including tenancy, unencumbered by any liability incurred by the company in winding up.

Power of Court to confer appropriate ownership rights unencumbered by previous liabilities to buyers in certain cases.

*General powers of Court in case of winding up by Court*

313. (1) The Court may at any time after making a winding up order, on the application either of the Company Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Power of Court to stay winding up.

(2) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

314. (1) As soon as may be after making a winding up order, the Company Liquidator shall settle a list of contributories, and distinguish between those who are contributories in their own right and those who are representatives of, or liable for the debts of, others, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Settlement of list of contributories and application of assets.

Provided that, where it appears to the Court that it shall not be necessary to make calls on, or adjust the rights of, contributories, the Court may dispense with the settlement of a list of contributories.

(2) In case of any dispute or objection, the aggrieved person may file an appeal in the Court within the prescribed period and the Court may pass appropriate order after hearing the parties.

315. The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled.

Delivery of property to liquidator.

316. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Payment of debts due by contributory and extent of set off.

(2) The Court, in making such an order, may,—

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to

him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited, or to his estate, the like allowance.

(3) Where all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of  
Court to  
make calls.

317. (1) The Court may, at any time after making a winding up order, make an order for payment of any calls on all or any of the contributories on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) An order so made by the Court on a contributory shall be, subject to any right of appeal, conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Payment  
into bank of  
moneys due  
to company.

318. (1) The court may order any contributory, purchaser or other persons from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India or a specified escrow or no-lien account in any scheduled bank instead of to the Liquidator.

(2) Any such order may be enforced in the same manner as if the Court had directed payment to the liquidator.

(3) All such money (including bills, hundis, notes and other securities) paid or delivered into the Reserve Bank of India or a specified escrow or no-lien account of any scheduled commercial bank in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court.

Adjustment  
of rights  
of contri-  
butories.

319. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to  
order costs.

320. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the Court thinks just.

Power to  
summon  
persons  
suspected  
of having  
property of  
company,  
etc.

321. (1) The Court may, at any time after the appointment of a Provisional Liquidator or the making of a winding up order summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Court may examine any officer or person so summoned on oath concerning matters aforesaid, either by word of mouth or on written interrogatories; and may, in the former case, reduce his answers to writing and require him to sign them.

(3) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed, the Court

may cause him to be apprehended and brought before the Court for examination.

(4) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court may order him to pay to the Provisional Liquidator or, as the case may be, the Liquidator, at such time and in such manner as to the Court may seem just, the amount by which he is indebted, either in full or in part, with or without costs of the examination.

(5) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court may order him to deliver to the Provisional Liquidator or, as the case may be, the Liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

5 of 1908. (6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively.

322. (1) When an order has been made for winding up a company by the Court, and the Company Liquidator has made a report to the Court under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined on oath.

Power to order public examination of promoters, directors, etc.

(2) The Company Liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court, in that behalf employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination, either personally or by any advocate, attorney or pleader entitled to appear before the Court.

(4) A person ordered to be examined under this section—

(a) shall, before his examination, be furnished at his own cost with a copy of the Company Liquidator's report; and

(b) may, at his own cost, employ an advocate, attorney or pleader entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(5) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by the person examined; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

323. At any time either before or after making a winding up order, the Court, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination of the affairs of the company, may cause—

Power to arrest absconding contributory.

(a) the contributory to be arrested and safely kept until such time as the Court may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

Saving of existing powers of Court.

324. Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Dissolution of company.

325. (1) When the affairs of a company have been completely wound up, or when the Court is of the opinion that the Liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever, and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall, within ten days of the date thereof be forwarded by the Liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the Liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

#### *Enforcement of and appeal from orders*

Order made in any Court to be enforced by other Courts.

326. (1) Any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court have jurisdiction by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

(2) Without prejudice to the provisions of sub-section (1), any recovery of debts found due to the company by an order or decision of the Court may, with the leave of the Court by which winding up order is passed, be recovered by the Liquidator in the same manner as arrears of land revenue, and for that purpose, the Liquidator may forward to the Collector, within whose jurisdiction the property of the person against whom any order or decision of the Court has been made is situated, a certificate under his signature specifying the amount so due and the person by whom it is payable.

Appeals from orders.

327. Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the division bench of the same Court.

### CHAPTER III

#### VOLUNTARY WINDING UP

##### *Resolutions for, and commencement of, voluntary winding up*

Circumstances in which company may be wound up voluntarily.

328. (1) A company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily;

(b) if the company passes a special resolution that the company be wound up



voluntarily.

(2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or clause (b) of sub-section (1).

329. (1) When a company has passed a resolution for voluntary winding up, it shall, within ten working days of the passing of the resolution, give notice of the resolution by advertisement in a national daily newspaper published in English and in the principal language of the district in which the registered office of the company is situate.

Publication of resolution to wind up voluntarily.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

*Explanation.*—For the purposes of this sub-section, a Liquidator of the company shall be deemed to be an officer of the company.

330. (1) A voluntary winding up shall be deemed to commence from the date when the resolution for voluntary winding up is passed.

Commencement of voluntary winding up.

(2) In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of such business:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

#### *Declaration of solvency*

331. (1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding two years from the commencement of the winding up as may be specified in the declaration.

Declaration of solvency in case of proposal to wind up voluntarily.

(2) A declaration made as above shall have no effect for the purposes of this Act, unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date; and

(b) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last-mentioned date and embodied a statement of the company's assets and liabilities as at that date.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up"; and a winding up in the case a declaration has not been so made and delivered in this Act is referred to as "a creditors' voluntary winding up".

*Provisions applicable to members' voluntary winding up*

Power of company to appoint and fix remuneration of Liquidators.

332. (1) The company in general meeting shall—

(a) appoint one or more Liquidators for the purpose of winding up the affairs and distributing the assets of the company; and

(b) fix the remuneration, if any, to be paid to the Liquidator or Liquidators.

(2) Any remuneration so fixed shall not be increased in any circumstances without the sanction of the Tribunal.

(3) No Liquidator shall take charge of his office until his remuneration as Liquidator is fixed as stated above.

(4) If a vacancy occurs by death, resignation or otherwise in the office of any Liquidator appointed by the company, the company in a general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Board's powers to cease on appointment of a Liquidator.

333. On the appointment of a Liquidator, all the powers of the Board and of the managing or whole-time directors and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar in pursuance of section 334 or in so far as the company in general meeting or the Liquidator may sanction the continuance thereof.

Notice of appointment of Liquidator to be given to Registrar.

334. (1) The company shall give notice to the Registrar of the appointment of a Liquidator or Liquidators made by it under section 332, of every vacancy occurring in the office of Liquidator, and of the name of the Liquidator or Liquidators appointed to fill every such vacancy under sub-section (4) of that section.

(2) The above notice shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or sub-section (2), the company (including every Liquidator or continuing Liquidator), and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Power of Liquidator to accept shares, etc., as consideration for sale of property of company.

335. (1) Where—

(a) a company (in this section called "the transferor company") is proposed to be, or is in course of being, wound up altogether voluntarily; and

(b) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or

not (in this section called "the transferee company"),

the Liquidator of the transferor company may, with the sanction of a special resolution of that company conferring on Liquidator either a general authority or an authority in respect of any particular arrangement—

(i) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or

(ii) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member or members of the transferor company who did not vote in favour of the special resolution and who singly or collectively own not less than ten per cent. of the paid-up capital of the company expresses dissent therefrom in writing addressed to the Liquidator, which is left at the registered office of the company within seven days after the passing of the resolution, the Liquidator may either—

(a) abstain from carrying the resolution into effect; or

(b) purchase the interest of the dissenters at a price to be determined by agreement, or by arbitration in the manner provided by this section.

(4) If the Liquidator elects to purchase the interest of the dissenting members, the purchase money shall be paid before the company is dissolved, and be raised by the Liquidator in such manner as may be determined by a special resolution.

26 of 1996.

(5) The provisions of the Arbitration and Conciliation Act, 1996, other than those restricting the application of that Act in respect of the subject-matter of the arbitration, shall apply to all arbitration in pursuance of this section.

336. (1) At any time after the commencement of winding up, if the Liquidator is of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 331, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

Duty of Liquidator to call creditors meeting in case of insolvency.

(2) If the Liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to five thousand rupees.

337. (1) Subject to the provisions of section 339, in the event of the winding up continuing for more than one year, the Liquidator shall—

Duty of Liquidator to call a general meeting at the end of each year.

(a) call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow; and

(b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the

prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the Liquidation.

(2) If the Liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to one thousand rupees.

Final  
meeting and  
dissolution.

338. (1) Subject to the provisions of section 339, as soon as the affairs of the company are fully wound up, the Liquidator shall—

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object of the meeting and published not less than one month before the meeting in a national daily newspaper published in English and in the principal language of the district in which the registered office of the company is situated.

(3) Within one week after the meeting, the Liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of the date thereof; and if the copy is not so sent or the return is not so made, the Liquidator shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(4) If a quorum is not present at the above meeting, the Liquidator shall, in lieu of the return referred to in sub-section (3) make a return that the meeting was duly called and that no quorum was present; and upon such a return being made within one week after the date fixed for the meeting, the provision of sub-section (3) as to the making of the return shall be deemed to have been complied with.

(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) If the Liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to five thousand rupees.

Alternative  
provisions  
as to  
annual and  
final  
meetings in  
case of  
insolvency.

339. Where section 336 has effect, sections 346 and 347 shall apply to the winding up, to the exclusion of sections 337 and 338, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the Liquidator shall not be required to call a meeting of creditors under section 337 at the end of the first year from the commencement of the winding up, unless the meeting held under section 336 has been held more than three months before the end of that year.

*Provisions applicable to creditors' voluntary winding up*

Meetings of  
creditors.

340. (1) The Company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised

once at least in a national daily newspaper published in English and in the principal language of the district in which the registered office of the company is situated.

(3) The Board of the company shall:

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their member to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside.

(5) If default is made—

(a) by the company, in complying with sub-sections (1) and (2);

(b) by its Board, in complying with sub-section (3);

(c) by any director of the company, in complying with sub-section (4),

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to ten thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to similar punishment.

341. (1) Notice of any resolution passed at a creditors' meeting in pursuance of section 340 shall be given by the company to the Registrar within ten days of the date of passing of the resolution.

Notice of resolutions passed by creditors' meeting to be given to Registrar.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues; and, for the purpose of this section, a Liquidator of the company shall be deemed to be an officer of the company.

342. (1) The creditors and the company at their respective meetings mentioned in section 340 may nominate a person to be Liquidator for the purpose of winding up the affairs and distributing the assets of the company.

Appointment of Liquidator.

(2) If the creditors and the company nominate different persons the person nominated by the company shall be Liquidator.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be Liquidator.

(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be Liquidator.

(5) If a vacancy occurs by death, resignation or otherwise, in the office of a Liquidator (other than a Liquidator appointed by, or by the direction of the Tribunal), the creditors in a general meeting, may fill the vacancy.

343. The creditors may fix the remuneration to be paid to the Liquidator or Liquidators.

Fixing of Liquidators' remuneration.

Board's powers to cease on appointment of Liquidator.

344. On the appointment of a Liquidator, all the powers of the Board shall cease, except in so far as the creditors in a general meeting may sanction the continuance thereof.

Application of section 335 to a creditors' voluntary winding up.

345. The provisions of section 335 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the Liquidator under that section shall not be exercised except with the sanction of the Tribunal.

Liquidator to call meetings of company and of creditors at end of each year.

346. (1) In the event of the winding up continuing for more than one year, the Liquidator shall—

(a) call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon as thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow; and

(b) lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the winding up.

(2) If the Liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to ten thousand rupees.

Final meeting and dissolution.

347. (1) As soon as the affairs of the company are fully wound up, the Liquidator shall—

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement—

(a) specifying the time, place and object thereof; and

(b) published not less than one month before the meeting in a national daily newspaper published in English and in the principal language of the district in which the registered office of the company is situated.

(3) Within one week after the date of the meeting, or if the meetings are not held on the same date, after the date of the later meeting, the Liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meetings and of the date or dates on which they were held; and if the copy is not so sent or the return is not so made, the Liquidator shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(4) If a quorum (which shall be two persons for the purposes of this section) is not present at either of such meetings, the Liquidator shall, in lieu of the return referred to

in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat; and upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) If the Liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to five thousand rupees.

*Provisions applicable to every voluntary winding up*

348. (1) The Liquidator may,—

Powers and duties of Liquidator in voluntary winding up.

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditor's voluntary winding up, with the sanction of a meeting of the creditors, exercise any of the powers given by clauses (a) to (d) of sub-section (1) of section 302 to a Liquidator in a winding up by the Court;

(b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the Liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories (which shall be *prima facie* evidence of the liability of the persons named therein to be contributories);

(d) exercise the power of the Court of making calls;

(e) call a general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or a special resolution, as the case may require, or for any other purpose he may think fit.

(2) The Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several Liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number of them not being less than two.

349. Any person who gives, or agrees or offers to give, to any member or creditor of a company any gratification whatever with a view to—

Corrupt inducement affecting appointment as Liquidator.

(a) securing his own appointment or nomination as the company's Liquidator; or

(b) securing or preventing the appointment or nomination of some person other than himself, as the company's Liquidator,

shall be punishable with fine which may extend to ten thousand rupees.

Power of Tribunal to appoint and remove Liquidator in voluntary winding up.

350. (1) If from any cause whatsoever there is no Liquidator acting, the Tribunal may appoint any other person as a Liquidator.

(2) The Tribunal may, on cause shown, remove a Liquidator and appoint any other person as a Liquidator in his place.

(3) The Tribunal may also appoint or remove a Liquidator on the application made by the Registrar in this behalf.

Notice by Liquidator of his appointment.

351. (1) Within twenty days after his appointment, the Liquidator shall publish in a national daily newspaper in English and in the principal language of the district in which the registered office of the company is situated, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

(2) If the Liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Arrangement when binding on company and creditors.

352. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourth in value of the creditors.

(2) Any creditor or contributory may, within twenty days from the completion of the arrangement, appeal to the Tribunal against it, and the Tribunal may amend, vary, confirm or set aside the arrangement.

Power to apply to Court or Tribunal to have questions determined or powers exercised.

353. (1) The Liquidator, any contributory or any creditor may apply to the Tribunal:

(a) to determine any question arising in the winding up of a company; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Court.

(2) The Liquidator or any creditor or contributory may apply to the Court or the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up; and such an application shall be made either—

(a) to such High Court, if the attachment, distress or execution is levied or put into force by that High Court; or

(b) to the Tribunal, if the attachment, distress or execution is levied or put into force by the Tribunal.

(3) On an application under sub-section (1) or sub-section (2), if the Court or Tribunal, as the case may be, is satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, it may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order as it thinks just.

(4) A copy of an order made under this section shall be forwarded by the company to the Registrar within fourteen days of the date of the order, and the Registrar shall make a minute of the order in his books relating to the company.



(5) Failure of the company or its Liquidator to comply with sub-section (4) shall be punishable with fine which may extend to five hundred rupees for every day of default.

354. The Liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Tribunal may, after considering the report, direct that that person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

Application of Liquidator to Tribunal for public examination of promoters, directors, etc.

355. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Costs of voluntary winding up.

## CHAPTER IV

### PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

#### *Proof and ranking of claims*

356. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Debts of all descriptions to be admitted to proof.

357. (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

Application of insolvency rules in winding up of insolvent companies.

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that, subject to the provisions of section 358, the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security—

(a) the Liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the Liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debts due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the

workmen's dues for the purposes of section 358.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor instead of relinquishing his security and proving for his debts proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the Liquidator (including a provisional Liquidator, if any) for the preservation of the security before its realisation by the secured creditor.

*Explanation.*—For the purposes of this proviso, the portion of expenses incurred by the Liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 358 and section 359,—

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;

14 of 1947.

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable but not paid up to the date of the winding up order (or the winding up resolution, as the case may be) for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman,

(ii) all accrued holiday remuneration, if any, becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution,

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company,

8 of 1923.

(iv) all sums due to any workman or any employee other than a workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen or employee other than a workman, maintained by the company; and for this purpose, "employees other than workmen" will mean persons employed with the company drawing such emoluments not exceeding such sums as may be prescribed;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of—

- (i) the amount of workmen's dues, and
- (ii) the amounts of the debts due to the secured creditors.

## ILLUSTRATION

The realised value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of debts due to secured creditors is Rs. 4,00,000. Therefore, the workmen's portion of the security is one-fourth of the value of the security, that is Rs. 25,000.

358. (1) In the winding up of a company, the expenses incurred by, and remuneration of, the Liquidator including the costs incurred in appointing valuers, chartered surveyors, chartered accountants, cost accountants, company secretaries, advertisements and auction and other such costs, shall be treated as first charge on realisation, and shall have priority over all other debts; this shall also include all expenses of any investigation under sections 192 and 193, in so far as these are payable by the company.

Overriding  
preferen-  
tial  
payments.

(2) Subject to sub-section (1), if there is any residue from the realisation of the sale of the company's assets and debts dues, then, in the winding up of a company—

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 357 *pari passu* with such dues,

shall be paid in priority to all other debts.

(3) The debts payable under clause (a) and clause (b) of sub-section (2) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(4) In the event of there being a dispute over workmen's dues between any representative of the secured creditors and that of the workmen or the Liquidator, and in case it is established that the quantum of workmen's dues are materially inflated (while the claims of secured creditors are not), then—

(a) the ratio of wages, other emoluments and dues to workmen as per the last audited accounts of the company, to the pre-debt default security value of the secured assets may be treated as the proportion of workmen's dues; and

(b) this proportion may be applied in ascertaining the quantum of overriding preferential payment to workmen.

## Illustration

1. Wages, other emoluments and benefits (including company provident fund due to workmen as per last audited accounts)	Rs. 5,00,000
2. Pre-default security value of secured assets	Rs. 25,00,000
3. Proportion of workmen's due (Rs. 5,00,000 divided by Rs. 25,00,000)	20%

4. Value realised after sale of secured assets	Rs. 10,00,000
5. Quantum of workmen's due under this section (20% of Rs. 10,00,000)	Rs. 2,00,000:

Provided that the quantum of workmen's due arrived at by using the formula given in clause (a) of this sub-section does not exceed the claim on account of workmen's due which has been established as materially inflated; and, if it does, the workmen's due will be ascertained according to that claim and not by the formula.

**Preferential  
payments.**

359. (1) In a winding up, subject to the provisions of section 358, there shall be paid in priority to all other debts.

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (d) of sub-section (8), and having become due and payable within the twelve months next before that date;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution subject also to the limit specified in sub-section (2);

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948, or any other law for the time being in force;

34 of 1948.

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

8 of 1923.

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company.

(2) The sum to which priority is to be given under clauses (b) and (c) of sub-section (1), shall not, in the case of any one claimant, exceed such sum as may be notified by the Central Government.

(3) Where any compensation under the Workmen's Compensation Act, 1923 is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e)

8 of 1923.

of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company,—

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, as specified under sub-section (1) of section 358, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section—

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are

payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(c) the expression "employee" does not include a workman; and

(d) the expression "the relevant date" means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a Provisional Liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

*Effect of winding up on antecedent and other transactions*

Fraudulent preference.

360. (1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by the Court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

(3) Where, under sub-section (1), there is a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less; and the value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(4) On any application made to the Court or the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court or the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof and, for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid; and this shall apply, with necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

361. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the Liquidator.

Avoidance of voluntary transfer.

362. Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months next preceding the commencement of the winding up, shall (unless it is proved that the company, immediately after the creation of the charge was solvent), be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette.

Effect of floating charge.

363. (1) Where any part of the property of a company which is being wound up consists of—

Disclaimer of onerous property in case of a company which is being wound up.

(a) land of any tenure, burdened with onerous covenants;

(b) shares or stock in companies;

(c) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts,

the Liquidator of the company may, with the leave of the Court or the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within three months after the commencement of the winding up or further three months period from such time such property has come to his knowledge, disclaim the property.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the Liquidator has not, within a period of fifteen working days after the receipt of the application, given notice to the applicant that he intends to apply to the Court or the Tribunal for leave to disclaim; and in case the property is a contract, if the Liquidator, after such an application does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(4) The Court or the Tribunal may, on the application of any person who is, as against the Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court or Tribunal thinks just; and any damages payable under the order of any such person may be proved by him as a debt in the winding up.

(5) The Court or Tribunal may, on an application by any person who either claims

any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the Court or Tribunal thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court or Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court or Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(6) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

Avoidance  
of transfers,  
etc., after  
commence-  
ment of  
winding up.

**364.** (1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Avoidance  
of certain  
attachments,  
executions,  
etc., in  
winding up  
by Court.

**365.** (1) Where any company is being wound up by the Court, at any time after the commencement of winding up, any attachment, distress or execution put in force against the estate or effects of the company or any sale held of the properties or effects of the company without leave of the Court shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.



*Offences antecedent to or in course of winding up*

366. (1) If any person, being a past or present officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Court or voluntarily, or which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up,—

Offences  
by officers  
of  
companies  
in Liqui-  
dation.

(a) does not, to the best of his knowledge and belief, fully and truly discover to the Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he required by law to deliver up;

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of ten thousand rupees or upwards, or conceals any debt due to or from the company;

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of ten thousand rupees or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Liquidator thereof;

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(j) within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with altering, or making of any omission, any book or paper affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;

(*m*) within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(*n*) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for;

(*o*) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable, in the case of any of the offences mentioned in clauses (*m*), (*n*) and (*o*), with imprisonment for a term which shall not be less than two years and may extend to five years and with fine, and, in the case of any other offence, with imprisonment for a term which shall be not less than six months and may extend to two years and with fine:

Provided that it shall be a good defence,—

(*i*) to a charge under any of the clauses (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud; and

(*ii*) to a charge under any of the clauses (*a*), (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (*o*) of sub-section (1), every person who takes in pawn or pledges or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than one year and may extend to three years and with fine.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Penalty for  
falsifica-  
tion of  
books.

367. If, with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up—

(*a*) destroys, mutilates, alters, falsifies or secretes, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities; or

(*b*) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company,

he shall be punishable with imprisonment for a term which shall not be less than three years and may extend to seven years, and shall also be liable to fine.

368. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up,—

Penalty for  
frauds by  
officers.

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgement or order for payment of money obtained against the company, or within two months before that date,

he shall be punishable with imprisonment for a term which shall be not less than one year and may extend to three years and shall also be liable to fine.

369. (1) Where a company is being wound up, if it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in a default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than six months and may extend to two years.

Liability  
where  
proper  
accounts  
not kept.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept—

(a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid; and

(b) where the business of the company has involved dealings in goods, statements of the annual stock taking and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

370. (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons, or for any fraudulent purpose, the Court or the Tribunal in case of a voluntary winding up, on the application of the Company Liquidator, or the Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court or the Tribunal in case of voluntary winding up may direct:

Liability  
for frau-  
dulent  
conduct of  
business.

Provided that the Court or the Tribunal in case of voluntary winding up may, without prejudice to the final disposal of the application, pass such interim orders as it may deem just and proper.

(2) On the hearing of an application under sub-section (1), the Company Liquidator or the Liquidator, as the case may be, may himself give evidence or call witnesses.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which shall not be less than one year and may extend to three years and shall also be liable to fine.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

Power of Court to assess damages against delinquent directors, etc.

371. (1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, Liquidator or officer of the company—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company;

(c) has been guilty of gross negligence and reckless trading in a manner as to facilitate or enable any money or property of the company to be misapplied or misappropriated,

the Court or Tribunal may, on the application of the Liquidator or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of such a person, and compel him to repay or restore the money or property or any part thereof, if need be with interest at such rate as the Court or Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court or Tribunal thinks just.

(2) An application under sub-section (1) shall be made within two years from the date of the order for winding up, or of the first appointment of the Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

Prosecution of delinquent officers and members of the company.

372. (1) If it appears to the Court in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the Liquidator to prosecute the offender.

(2) If it appears to the Liquidator in the course of a voluntary winding up that any past or present officer, or any member of the company has been guilty of any offence in relation to the company, he shall himself prosecute the offender in the Tribunal.

(3) When any proceedings are instituted under this section, it shall be the duty of the Liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

*Explanation.*—For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

*Miscellaneous provisions*

373. (1) The Liquidator may, with the sanction of the Court, when the company is being wound up by the Court, or with the sanction of a special resolution of the company, in the case of a voluntary winding up,—

Liquidator to exercise certain powers subject to sanction.

(a) pay any classes of creditors in full;

(b) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; or

(c) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Court, the Supreme Court may make rules under section 452 providing that the Liquidator may, under such circumstances, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (b) or sub-clause (c) of sub-section (1) without the sanction of the Court.

(3) In the case of a voluntary winding up, the exercise by the Liquidator of the powers conferred by sub-section (1) shall be subject to the control of the Court or Tribunal.

(4) Any creditor or contributory may apply to the Court or Tribunal with respect to any exercise or proposed exercise of any such powers.

374. (1) Where a company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Notification that a company is in liquidation.

(2) If default is made in complying with this section, the company, and every one of the following persons who wilfully authorises or permits the default, namely, any officer of the company, any Liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to five thousand rupees for each default.

375. Where a company is being wound up, all books and papers of the company and of the Liquidators shall be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Books and papers of company to be evidence.

Disposal of books and papers of company.

376. (1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Liquidator may be disposed of as follows, that is to say—

(a) in the case of a winding up by the Court, in such manner as the Court directs;

(b) in the case of a members' voluntary winding up, in such manner as the company by a special resolution directs; and

(c) in the case of a creditors' voluntary winding up, in such manner as the creditors of the company may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the Liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules,—

(a) prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its Liquidator; and

(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Court or Tribunal from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

Information as to pending liquidation.

377. (1) If the winding up of a company is not concluded within one year after its commencement, the Liquidator shall, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than six months, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

(a) in the case of a winding up by the Court, in Court; and with the Registrar; and

(b) in the case of a voluntary winding up, with the Registrar.

(2) Where a statement referred to in clause (a) of sub-section (1) relates to a Government company in liquidation, the Liquidator shall forward a copy thereof to—

(a) the Central Government, if it is a member of the Government company; or

(b) any State Government, if it is a member of the Government company; or

(c) the Central Government and any State Government, if both are members of the Government company.

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall be punishable accordingly.

(5) If a Liquidator fails to comply with any of the requirements of this section, he shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues:

Provided that if the Liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the Liquidator shall be punishable with imprisonment for a term which shall be not less than six months and may extend to two years and shall also be liable to fine.

378. (1) Every Company Liquidator shall pay the moneys received by him as Liquidator of any company, either into the public account of India in the Reserve Bank of India or in any special banking account opened by him in any scheduled bank in India under the title "The Liquidation Account ..... Company Limited/Private Company Limited/Company".

Liquidator to make payments in bank.

(2) Every Liquidator of a company, not being a Company Liquidator, shall pay the moneys received by him in his capacity as such into any special banking account opened by him in any scheduled bank in India under the title "The Liquidation Account of ..... Company Limited/Private Company Limited/Company".

(3) If any such Liquidator at any time retains for more than ten working days a sum exceeding twenty-five thousand rupees or such other amount as the Court or Tribunal may, on the application of the Liquidator authorise him to retain, then, unless he explains the retention to the satisfaction of the Court or Tribunal, he shall—

(a) pay interest on the amount so retained in excess, at the rate of fifteen per cent. per annum;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) also be liable to have all or such part of his remuneration as the Court may think just disallowed, and to be removed from his office by the Court.

379. (1) If the Liquidator has in his hands or under his control any money representing—

(a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable,

the Liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Companies Liquidation Account.

Unpaid dividends and undistributed assets to be paid into the Companies Liquidation Account.

(2) On the dissolution of the company, the Liquidator shall similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) When making any payment referred to in sub-sections (1) and (2), the Liquidator shall furnish to such officer as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known address of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The Liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2); and such receipt shall be an effectual discharge of the Liquidator in respect thereof.

(5) Where the company is being wound up by the Court, the Liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in sub-section (1) of section 378.

(6) Where the company is being wound up voluntarily, the Liquidator shall, when filing a statement in pursuance of sub-section (1) of section 376, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within ten working days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account may apply to the Court or Tribunal for an order for payment thereof, and the Court or Tribunal, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due:

Provided that before making such an order, the Court or Tribunal shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within twenty working days from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the Court or Tribunal, apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Company Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the Court or Tribunal, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of ten years, shall be transferred to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any Liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall—

(a) pay interest on the amount retained at the rate of fifteen per cent. per annum:



Provided that the Central Government may, in any proper case, remit either in part or in whole the amount of interest which the Liquidator is required to pay under this clause;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) where the winding up is by the Court, also be liable to have all or such part of his remuneration as the Court may think just to be disallowed, and to be removed from his office by the Court.

380. (1) If any Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within ten working days after the service on him of a notice requiring him to do so, the Court or Tribunal may, on an application made to the Court or Tribunal by any contributory or creditor of the company or by the Registrar, make an order directing the Liquidator to make good the default within such time as may be specified in the order.

Enforcement of duty of Liquidator to make returns, etc.

(2) Any such order may provide that all costs of, and incidental to, the application shall be borne by the Liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a Liquidator in respect of any such default.

381. (1) Any affidavit required to be sworn under the provisions, or for the purposes of this Part of the Act may be sworn—

Court or person before whom affidavit may be sworn.

(a) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits; and

(b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country, or before an Indian Consul or Vice-Consul.

(2) All Court, Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

382. (1) Where a company has been dissolved, whether in pursuance of this Part or of section 267 or otherwise, the Court may at any time within two years of the date of the dissolution, on application by the Liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of Court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made within twenty working days after the making of the order, to file a certified copy of the order with the Registrar who shall register the same; and if such person fails so to do, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Power of Registrar to strike defunct company off register.

383. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation or where a company has not filed its annual returns or its balance sheets and profit and loss accounts for three consecutive years, the Registrar shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in one English newspaper and one vernacular newspaper circulating in the area in which the registered office of the company is situate with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish, a notice in newspaper as is provided in sub-section (2) that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound-up, the Registrar has reasonable cause to believe either that no Liquidator is acting, or that the affairs of the company have been completely wound-up, and any returns required to be made by the Liquidator have not been made for a period of six consecutive months, the Registrar shall publish a like notice in newspaper as is provided in sub-section (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish a like notice as is provided in sub-section (2), and on the publication of this notice, the company shall stand dissolved:

Provided that—

(a) the liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the Court to wind-up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Tribunal may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, manager or other officer of the company, or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a Liquidator may be addressed to the Liquidator at his last known place of business.

### PART VIII

#### Application of Act to existing companies

384. This Act shall apply to all the existing companies of same class (including an unlimited company) in the same manner, in all respects and to the same extent, as if such each of the companies had been formed and registered under this Act.

Application of Act to companies formed and registered under previous companies laws.

### PART IX

#### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

385. (1) With the exceptions and subject to the provisions contained in this section—

Companies capable of being registered.

(a) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them; and

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members; may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that—

6 of 1882.  
7 of 1913.

(i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in section 386, shall not register in pursuance of this section;

(iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iv) a company that is not a joint stock company as defined in section 386 shall not register in pursuance of this section as a company limited by shares;

(v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(vi) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority required for the purposes of sub-section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Myanmar, Aden or Pakistan.

Definition  
of "joint-  
stock  
company".

386. (1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Require-  
ments for  
registration  
of joint-  
stock  
companies.

387. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents:—

(a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "limited" or "private Limited" as the case may require, as the last word or words thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**388.** Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents, namely:—

(a) a list showing the names, addresses and occupations of the directors, and the manager, if any, of the company;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Require-  
ments for  
registration  
of compa-  
nies not  
being  
joint-stock  
companies.

**389.** The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Authenti-  
cation of  
statements  
of existing  
companies.

**390.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 386.

Power of  
Registrar  
to require  
evidence as  
to the  
nature of  
company.

**391.** (1) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

Notice to  
customers  
on regis-  
tration of  
banking  
company  
with limited  
liability.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects

the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Change of name for purposes of registration.

392. Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part:

Provided that the like assent of the members of the company shall be required to the change of name as is required by section 385 to the registration of the company under this Part.

Addition of "Limited" or "Private Limited" to name.

393. When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited", as the case may be, shall form, and be registered as, the last word or words of its name:

Provided that this section shall not be deemed to exclude the operation of section 13.

Certificate of registration of existing companies.

394. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under the rules made in this behalf, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Vesting of property on registration.

395. All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

396. The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of pending legal proceedings.

397. All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under this Part.

398. (1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) the rules specifying the articles shall not apply unless and except in so far as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(c) subject to the provisions of this section the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company;

(d) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company.

(e) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as it relates to such debts or liabilities as aforesaid;

(f) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to—

(a) the registration of an unlimited company as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 273) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian Law, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter and Letters Patent.

Power to  
substitute  
memoran-  
dum and  
articles for  
deed of  
settlement.

399. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by a special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The Provisions of sections 10 and 11 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section with the following modifications:—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter of Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

Power of  
Court to  
stay or  
restrain  
proceedings.

400. The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Suits stayed  
on winding  
up order.

401. Where an order has been made for winding up, or a provisional Liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.



## PART X

## REGISTRATION OFFICES AND OFFICERS AND FEES

## CHAPTER I

*Registration office and Registrar*

402. (1) The Central Government may, by notification, appoint a Director General of Inspection and Investigation (hereinafter referred to as "Director General") and as many Additional, Joint, Deputy or Assistant Directors General of Inspection and Investigation as it may think, to assist the Director General for exercising powers of inspection and investigation as contained in this Act.

Power of Central Government to appoint Director General of Inspection and Investigation.

(2) The Director General shall be responsible for the conduct of all inspections and investigations under this Act and shall exercise such supervision and control over all the inspections or investigations made under this Act and to perform such functions and discharge such duties as may be given to him by the Central Government.

(3) The Director General shall perform his functions under the general supervision of the Central Government and the other officers appointed under sub-section (1) shall work under the direction of the Director General and shall be responsible to him.

(4) The Central Government may provide for such other officers and other employees to assist the Director General to carry out his functions under this Act.

403. (1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Central Government, having regard to the number of companies in any place, thinks fit.

Registration offices.

(2) The Central Government may appoint such Registrars, and such Additional, Joint, Deputy and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Central Government.

(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

(5) Whenever any act is by this Act directed to be done to or by the Registrar it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of companies, or joint-stock companies or in his absence, to or by such person as the Central Government may for the time being authorise:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them; any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

Appoint-  
ment of  
Regional  
Directors.

404. (1) The Central Government may appoint such number of Regional Directors as it may consider necessary for exercising the powers and discharging the functions of Regional Directors under the provisions of this Act.

(2) The Central Government shall also define the jurisdiction in respect of which the Regional Directors would exercise their powers and discharge their functions specified under sub-section (1).

(3) The Regional Directors shall exercise such powers of supervision and control over the Registrars of Companies and Official Liquidators within his jurisdiction as may be specified by the Central Government.

Powers and  
functions  
of Depart-  
mental  
officers.

405. (1) The Director General, the officers appointed to assist him under sub-section (1) of section 403, the Regional Director and the Registrars shall exercise their powers and discharge their functions under this Act subject to the general supervision and control of the Central Government and shall also be subject to such directions as may be given to them by the Central Government.

(2) The regional Directors and the Registrars shall also exercise their functions under this Act subject to any directions that may be given by the Director General.

Power to  
appoint  
licensed  
Registrars.

406. (1) Without prejudice to the provisions of section 403, the Central Government may enter into an agreement with any company which in the opinion of the Central Government is capable of performing such functions of the Registrar as specified in sub-section (2) and included in the agreement at such places as may be specified in the agreement.

(2) The functions that may be assigned to licensed registrars under sub-section (1) by an agreement under that sub-section shall be as follows:—

(a) acceptance and registration of documents;

(b) incorporation of companies;

(c) inspection of documents by public;

(d) power to make inquiries, in so far as it is related to the functions assigned;

(e) providing evidence before the Court or Tribunal;

(f) supply of information or data to the Central Government; and

(g) such other facts as are considered necessary by the Central Government for the purpose of specifying it as a licensed Registrar for performing.

(3) Where a licensed Registrar has been appointed for a place, for performing such of the functions of the Registrar under this Act,—

(a) the Registrar appointed by the Central Government under section 403 shall not perform such functions in respect of that area;

(b) the licensed Registrar shall keep all the information and documents furnished to him under the provisions of this Act in strict confidence and on behalf of Government;

(c) furnishing all such information to the Central Government as and when required by it;

- (d) comply with all instructions or directions by the Central Government;
- (e) hand over all the materials and information to the Central Government after the termination of the agreement;
- (f) the licensed Registrar shall not perform any of the functions relating to companies belonging to the same group as the licensed Registrar;
- (g) such other materials as may be specified in the agreement.

*Explanation.*—For the purpose of this sub-section, the expression "group" shall have the same meaning as in the Monopolies and Restrictive Trade Practices Act, 1969.

(4) The agreement shall provide that a contravention of any of its terms and conditions or the provisions of this section, the licensed Registrar or the officers who are in default shall be liable to imprisonment for a term not exceeding five years and liable to fine which may extend to fifty thousand rupees.

(5) For the removal of doubts, it is hereby declared that the licensed Registrar shall, so long as he performs the functions of the Registrar under this Act, shall be deemed to be a public servant under section 21 of the Indian Penal Code.

407. (1) Save as otherwise provided elsewhere in this Act, any person may—

(a) inspect any document kept by the Registrar in accordance with the rules made from time to time being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

(b) require a certificate of the incorporation of the company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court or the Tribunal except with the leave of that Court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court or the Tribunal.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(4) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (5) are satisfied,

Inspection, production and evidence of documents kept by Registrar and admissibility of micro films, etc., as evidence.

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence should be admissible.

(5) The conditions referred to in sub-section (4) in respect of a computer printout shall be the following, namely:—

(a) the information contained in the statement reproduces or is derived from returns and documents filed by the company on paper or on computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;

(b) while receiving returns or documents on computer media, necessary checks by scanning the documents filed on computer media will be carried out and media will be duly authenticated by the Registrar; and

(c) the Registrar shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.

Enforcement  
of duty of  
company to  
make  
returns,  
etc., to  
Registrar.

408. (1) If a company, having made default in complying with any provision of this Act which requires it to file or register with, or deliver or send to, the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Tribunal may on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any provisions in this or any other Act imposing penalties on a company or its officers in respect of any such default as aforesaid.

## Chapter II

### *Fees payable under the Act*

Fees to be  
paid.

409. (1) There shall be paid to the Registrar in respect of several matters mentioned under this Act such fees and in such manner as may be prescribed.

(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such fee for belated filing or registration in such manner as may be prescribed.

410. All fees, charges, and other sums paid to any Registrar or any other officer of the Central Government in pursuance of this Act shall be paid into the Public Account of India in such manner as may be prescribed.

Fees, etc., paid to registrar and other officers to be accounted for to Central Government.

411. (1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or send to, the Registrar on payment of the fee or fees required to be paid under section 409, such return, account or other document within such time as may be specified in the order.

Power of Court trying offences under the Act to direct the filing of documents with Registrar.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

### CHAPTER III

#### *Power of Central Government*

412. (1) Where the Central Government is of the opinion—

Power of Central Government to conduct special audit, etc.

(a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(b) that any company is being managed in a manner likely to cause serious injury and damage to the interest of the trade, industry or business to which it pertains; or

(c) that the financial position of any company is such as to endanger its solvency; or

(d) that grave irregularities or contravention of the provisions of this Act in relation to the maintenance of accounts of the company or in the conduct of audit which have tended to erode the faith and confidence in the proper management of the company in the opinion of the members of the company; or

(e) that the management of the company is in any manner prejudicial to the interest of members or creditors of the company or to the public interest,

the Central Government may at any time by order direct that a special audit, cost audit or secretarial audit of the company's accounts as it may consider necessary, shall be conducted either by a chartered accountant, or a cost accountant or a company secretary or a firm of such professionals, as the case may be, or the company's auditor himself for such period or periods specified in the order.

(2) An auditor referred to in sub-section (1) shall have the powers and duties of an auditor and an inspector under this Act and shall furnish his report to the Central Government.

(3) The report of the person referred to in sub-section (1) shall, as far as may be, include all matters required to be included in the statutory auditors report under this Act and shall also include a statement on any other matter which may be referred to him by the Central Government by the order.

(4) The Central Government may by order direct any person specified in the order to furnish to the person referred to in sub-section (1) within such time as may be specified therein such information or additional information as may be required by the said person in connection with the audit to be conducted under this section.

(5) Any failure to comply with such order by any such person shall be punishable with fine which may extend to five thousand rupees.

(6) On receipt of the report of the auditor under this section, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force.

(7) The expenses of, and incidental to, any audit conducted under this section (including the remuneration of the auditor) shall be determined by the Central Government (which determination shall be final) and paid by the company and in default of such payment shall be recoverable from the company as an arrear of land revenue.

Power to  
call for  
information  
from  
Department  
of Govern-  
ment, etc.

413. The Central Government may, if it considers it necessary, for the purpose of updating any information about the working of a company or with respect to companies generally or to any other matter for the better administration of this Act, call for any information from any office or department of any Government or organisation; whether under the control of the Government or otherwise, including banks and financial institutions and it shall be incumbent on such office, department or other organisation to comply with such request within such time as may be specified in the order:

Provided that no information which has come into the possession of any office or department or organisation as a confidential communication or information not required by any provision of law to be disclosed, shall not be furnished to the Central Government or shall be furnished only with such deletions as the officer, department or other organisation may consider necessary.

Establish-  
ment of  
Investor  
Education  
and  
Protection  
Fund.

414. (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter referred to in this section as the "Fund").

(2) There shall be credited to the Fund the following amounts:—

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d) above;

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amount referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

*Explanation.*—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under subsection (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

#### CHAPTER IV

##### *National Advisory Committee on Accounting Standards*

415. (1) The Central Government may, by notification, constitute an Advisory Committee to be called the National Advisory Committee on accounting Standards, hereafter in this section referred to as the "Advisory Committee" to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

Constitution of National Advisory Committee on Accounting Standards.

(2) The Advisory Committee shall consist of the following members, namely:—

(a) a Chairman, who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline;

38 of 1949.

23 of 1959.

56 of 1980.

(b) one member, each nominated by the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949, Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(c) one representative of the Central Government to be nominated by it;

(d) one representative of the Reserve Bank of India to be nominated by it;

(e) one representative of the Comptroller and Auditor-General of India, to be nominated by him;

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university;

(g) the Chairman of the Central Board of Direct Taxes, constituted under Central Boards of Revenue Act, 1963, or his nominee;

54 of 1963.

(h) two members to represent the chambers of commerce and industry, to be nominated by the Central Government; and

(i) one representative of the Securities and Exchange Board of India, to be nominated by it.

(3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such terms as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.

## PART XI

### COMPANY LAW TRIBUNAL

#### Constitution of Tribunal.

416. (1) The Central Government shall, by notification, constitute a Tribunal to be known as the Tribunal to exercise and discharge such original and appellate powers and functions as are, or may be conferred upon the Tribunal by or under this Act or under any other law.

(2) The Tribunal shall consist of President, Vice-President and such number of judicial and technical members, as the Central Government deems fit:

Provided that the Central Government may, by notification, continue the appointment of the Chairman, Vice-Chairman or any other member of the Board of Company Law Administration, functioning as such immediately before the commencement of this Act, as the President, Vice-President or any other member of the Tribunal after such commencement for such period not less than their existing terms of office, as may be specified in the notification.

(3) A judicial member shall be a person who has held a judicial office in the territory of India or who has been a member of the Indian Legal Service or who has been an advocate of a High Court or has been a member of the Central Company Law Service (Legal Branch) with such seniority and experience and such qualifications, as may be prescribed.

(4) A technical member shall be a person who has been in the practice of accountancy as a chartered accountant or as a company secretary in whole time practice or as a cost accountant in whole-time practice or, has been a member of the Central Company Law Service (Accounts Branch) with such seniority and experience and such qualifications, as may be prescribed.

(5) The Central Government may ordinarily appoint a judicial member of the Tribunal to be the President thereof, in consultation with the Chief Justice of India or his nominee.



(6) The Central Government may also appoint one or more members of the Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof in consultation with the Chief Justice of India or his nominee.

(7) Subject to the foregoing provisions of this section, the other terms and conditions of service of the President, Vice-President, other members and staff of the Tribunal shall be such as the Central Government may, by rules specify.

45 of 1860. (8) The President, Vice-President, other Members and officers and staff of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(9) The President shall exercise such financial and administrative powers as may be vested in him by the Central Government.

(10) The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general order or special order in writing.

(11) No act done by the Tribunal shall be called in question on the ground of any defect in the constitution of, or the existence of any vacancy in the Tribunal.

417. (1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by benches constituted by the President out of which one shall be a judicial member and another shall be a technical member: Constitution of benches.

Provided that it shall be competent for the Vice-President or any other Member authorised in this behalf to function as bench consisting of a single member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Vice-President or such member that the case or matter is of such a nature that it ought to be heard by a bench consisting of two members, the case or matter may be transferred by the President or, as the case may be, referred to him for transfer to such bench as the President may deem fit.

(2) The President may, for the disposal of any particular case, constitute a special bench consisting of three or more members, one of whom shall necessarily be a judicial member and a technical member.

(3) If the members of a bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other members of the Tribunal and such point or points shall be decided according to the opinion of the majority of members of the Tribunal who have heard the case, including those who first heard it.

(4) There shall be constituted, such number of benches, as may be notified by the Central Government.

(5) In addition to the other benches, there shall be a principal bench at New Delhi presided over by the President or Vice-President.

(6) The principal bench of the Tribunal shall have powers of transfer of proceedings from any bench to another bench of the Tribunal in the event of inability of any bench from hearing any such proceedings for any reason:

Provided that no transfer of any proceedings shall be made under this sub-section except after recording reasons for doing so in writing.

Powers of  
benches.

418. (1) Every bench constituted under sub-section (1) of section 417 shall have powers of a civil court while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) issuing of commissions;

(d) compelling the production of documents or other material objects producible as evidence and impounding the same;

(e) appointing Committees for the investigation of any matter, including the giving of any expert opinion or advice on any matter specified by it;

(f) examining witnesses on oath;

(g) granting adjournments;

(h) reception of evidence on affidavits.

(2) Every bench shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.

2 of 1974.

45 of 1860.

(3) Without prejudice to the foregoing provisions of this section the Tribunal shall, in the exercise of its powers and the discharge of any of its functions under this Act, or any other law, be guided by the principles of natural justice and shall act in its discretion.

(4) Subject to the foregoing provisions of this section, the Tribunal shall have power to regulate its own procedure.

(5) An appeal against the order of the Regional Director imposing any fine under this Act, shall be preferred to the Tribunal within sixty days of the date on which the order sought to be appealed against, is communicated to the company or the officer, as the case may be:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period of sixty days, allow it to be filed within a further period not exceeding sixty days.

Order of  
Tribunal.

419. (1) The Tribunal may, after giving both the parties to any proceeding before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the parties.

(3) The Tribunal shall send a copy of any order passed under this section to all the parties concerned.

420. (1) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court in whose jurisdiction the registered office of the company is situate within sixty days of the date of communication of the order of the Tribunal to him on any question of law arising out of such order:

Appeals  
against  
the order  
of the  
Tribunal.

Provided that an appeal filed under this section shall be heard by a division bench of the High Court consisting of two sitting judges:

Provided further that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period, allow it to be filed within a further period not exceeding sixty days.

(2) Notwithstanding anything contained in sub-section (1), if on an application made by a party to the proceeding before it, the Tribunal is of the opinion that, on account of a conflict in the decisions of the High Court in respect of any particular question of law, it is expedient that it should be decided by the Supreme Court, an appeal shall lie, on a certificate issued by the Tribunal, direct to the Supreme Court.

421. The Tribunal shall have power to review its own orders.

Power of  
review.

70 of 1971. 422. The Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise, for this purpose under the provisions of the Contempt of Courts Act, 1971, shall have the effect subject to modifications that,—

Power to  
punish for  
contempt.

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal;

(b) the references to Advocate General in section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

54 of 1969.  
68 of 1986. 423. Notwithstanding anything contained in the Monopolies and Restrictive Trade Practices Act, 1969, the Consumer Protection Act, 1986 or any other law for the time being in force, any dispute arising out of any of the provisions of this Act or with respect to any matter dealt with in this Act for which no provision has been made in the Act for its determination shall be decided only by the Tribunal and not by any Court, Tribunal or other authority.

Tribunal  
to hear all  
matters  
arising  
under the  
Act.

## PART XII

## GENERAL

*Collection of information and statistics from companies*

Power of  
Central  
Government  
to direct  
companies  
to furnish  
information  
or statis-  
tics.

424. (1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2) (a) Every order under sub-section (1) addressed to companies generally or to any class of companies, shall be published in the Official Gazette and in such other manner, if any, as the Central Government may think fit.

(b) The date of publication of the order in the Official Gazette shall be deemed to be the date on which the demand for information or statistics is made on such companies or class of companies, as the case may be.

(3) Every order under sub-section (1) addressed to an individual company shall be served on it in the manner laid down in section 25.

(4) For the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of any order under sub-section (1) is correct and complete, the Central Government may require such company—

(a) to produce such records or documents in its possession or under its control for inspection, before such officer and at such time as may be specified by the Central Government; or

(b) to furnish such further information as may be specified by the Central Government and within such time as may be fixed by it.

(5) The Central Government may also, by order, direct an inquiry to be made by any person or persons named in the order—

(a) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under sub-section (1); or

(b) for the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of an order made under sub-section (1) is correct and complete; and in so far as such information or statistics may be found to be incorrect or incomplete, for the purpose of obtaining such information or statistics as may be necessary to make the information or statistics furnished correct and complete,

and a person or persons so appointed shall, for the purposes of such inquiry, have such powers as may be prescribed.

(6) If any company fails to comply with an order made under sub-section (1) or (4), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and every officer of the company who is in default, shall be punishable with imprisonment which may extend to two years, or with fine which may extend to ten thousand rupees, or with both:

Provided that no such person shall be punishable under this sub-section, unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

(7) An order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section, so far as may be, shall apply in relation to such person as they apply in relation to the company.

(8) Where a body corporate incorporated outside India and having established an office within India, carries on business in India, all references to a company in this section shall be deemed to include references to the body corporate in relation, and only in relation, to such business.

*Application of Act to companies governed by Special Acts*

425. The provisions of this Act shall apply—

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|--|--|
| <p>4 of 1938.</p> <p>10 of 1949.</p> <p>9 of 1910.<br/>54 of 1948.</p> | <p>(a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938;</p> <p>(b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;</p> <p>(c) to companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948;</p> <p>(d) to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;</p> <p>(e) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification.</p> |
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Application of Act to insurance, banking, electricity supply and other companies governed by special Acts.

*Application of Act to Government companies*

426. (1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 180 to 188.

(2) The auditor of a Government company shall be appointed or re-appointed by the Central Government on the advice of the Comptroller and Auditor-General of India and the remuneration of the auditor shall be fixed through a resolution by the Board of the concerned Government company.

Application of sections 180 to 188 to Government companies.

(3) The Comptroller and Auditor-General of India shall have power—

(a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;

(b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct.

(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.

(5) Any such comments upon, or supplement, to the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

Annual  
reports on  
Government  
companies.

427. (1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

(a) prepared within three months of its annual general meeting before which the audit report is placed under sub-section (5) of section 426; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government Company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (1).

(3) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(a) prepared within the time specified in sub-section (1); and

(b) as soon as may be after such preparation laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (1).

(4) The provisions of this section shall, so far as may be, apply to a Government Company in liquidation as they apply to any other Government company.

Provisions  
of section  
426 to  
apply to  
certain  
companies.

428. The provisions of section 426 shall apply to a company in which more than fifty per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:—

(a) the Central Government and one or more Government companies;

(b) any State Government or Governments and one or more Government companies;

(c) the Central Government, one or more State Governments and one or more Government companies;

(d) the Central Government and one or more corporations owned or controlled by the Central Government;

(e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;

(f) one or more corporations owned or controlled by the Central Government or the State Government;

(g) more than one Government company.

*Modification of Act in its application to Nidhis and Mutual Benefit Societies*

429. (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification, declare to be a "Nidhi" or "Mutual Benefit Society", as the case may be.

(2) The Central Government may, if satisfied that it is necessary or expedient so to do in the public interest, by notification, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to or any Nidhi or Mutual Benefit Society declared as such under sub-section (1); or

(b) shall apply to any Nidhi or Mutual Benefit Society, declared as such under this section, only with such exceptions, modifications and adaptations, as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately, following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification, or both the Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

*Offences*

430. (1) No Court, Tribunal or the Regional Director shall take cognizance of any offence under this Act (other than an offence with respect to which proceedings are instituted under section 372), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder, of the company, or of a person authorised by the Central Government or the Securities and Exchange Board in that behalf:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court, Tribunal or the Regional Director trying the offence shall not be necessary, unless the Court, Tribunal or the Regional Director for reasons to be recorded in writing requires his personal attendance at the trial.

(3) Sub-section (1) shall not apply to any action taken by the Liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in sections 282 to 383 or in any other provision of this Act relating to the winding up of companies.

Power of Central Government to modify Act in relation to class of companies or any other company.

Offences under Act to be cognizable only on complaint by Registrar, shareholder or Government.

(4) A Liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

Composition  
of certain  
offences.

431. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act may be compounded,—

2 of 1974.

(a) before the institution of any prosecution,—

(i) by the Director General, where the offence is punishable by imprisonments; or

(ii) where the offence is punishable only with fine, by the Regional Director;

(b) where the prosecution has been instituted, the offence shall be compounded only with the permission of the court in which such offence is under trial on payment by the company or the officer, as the case may be, to the Central Government to such sum as the court, may specify.

(2) Every contravention other than the offences under this Act shall be compounded by the Regional Director on payment or credit by the company or officers, as the case may be, to the Central Government, of such amount as the Director General and Regional Director, having jurisdiction, as the case may be, as may be specified.

Offences  
and contra-  
ventions.

432. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act shall—

2 of 1974.

(a) be tried by the Metropolitan Magistrate or by a Judicial Magistrate of the first class having jurisdiction to try that offence; and

(b) be deemed to be non-cognizable within the meaning of the said Code.

(2) An appeal against the order of the Regional Director under sub-section (2) of section 431, imposing any fine shall lie with the Tribunal.

Power of  
Central  
Government  
to appoint  
Company  
Prosecutors.

433. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons, as Company Prosecutors for the conduct of prosecutions arising out of this Act; and the persons so appointed as Company Prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors appointed under that Code.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other officer of Central Government either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other officer shall be deemed to have been validly presented to the appellate Court.

2 of 1974.

Payment of  
compensa-  
tion in  
cases of  
frivolous  
or vexatious  
prosecu-  
tions.

434. (1) In respect of any case instituted upon the complaint of a shareholder against the company or any officer thereof in pursuance of section 430, the provisions of section 250 of the Code of Criminal Procedure, 1973, shall not apply; and the following provisions shall apply instead.

2 of 1974.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused, and is of the opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the shareholder upon whose complaint the accusation was made



is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may show; and if the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may, for reasons to be recorded, direct that compensation of such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding five thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, of the compensation under sub-section (3), further order that, in default of payment, the shareholder be ordered to pay such compensation and shall suffer imprisonment for a term not exceeding six months.

45 of 1860. (5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, in so far as it relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed; or, if an appeal is presented, before the appeal has been decided.

435. (1) If, on an application made to a Judge of a High Court in Chambers by the Public Prosecutor of the State or by the Central Government, it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of, or under the control of, the company, an order may be made—

Production and inspection of books where offence suspected.

(a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of the offence; or

(b) requiring the managing director or manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (b) thereof shall be made by virtue of this sub-

section.

(3) No appeal shall lie from the decision of a Judge of the High Court under this section.

Penalty for false statements.

436. If in any return, report, certificate, balance-sheet, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act, any person makes a statement—

(a) which is false in any material particular, knowing it to be false; or

(b) which omits an material fact, knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

Penalty for false evidence.

437. If any person intentionally gives false evidence—

(a) upon any examination upon oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty where no specific penalty is provided elsewhere in the Act.

438. If a company or any officer in default or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Penalty for wrongful withholding of property.

439. (1) If any officer or employee of a company—

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in a default, to suffer imprisonment for a term which may extend to two years.

440. If any person or persons trade or carry on business under any name or title of which the word "Company", "Limited" or the words "Private Limited", or any contraction or limitation thereof is or are included that person or each of those persons shall, unless the person or persons is or are duly incorporated as a company, a company with limited liability, or as a private company, as the case may be, be punishable with imprisonment which may extend to six months and a fine not exceeding five thousand rupees.

Penalty for improper use of words "Company", "Limited" and "Private Limited".

### *Legal proceedings*

441. Where a limited company is a plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of the defendant if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power to require limited company to give security for costs.

442. (1) If any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court, Regional Director or the Tribunal hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court, Regional Director or the Tribunal may relieve him, either wholly or partly, from his liability on such terms as it may think fit:

Power to grant relief in certain cases.

Provided that in a criminal proceeding under this sub-section, the Court, Regional Director or the Tribunal shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the Tribunal for relief and the Tribunal shall have the same power to relieve him as it will have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court, Regional Director or the Tribunal shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

443. (1) Any order made by a court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

Enforcement of orders of courts or Tribunal.

(2) Any order made by the Tribunal may be enforced by the Tribunal or the Regional Director, as the case may be, in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Tribunal or the Regional Director to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain,

and thereafter the Court to which such order is sent for execution shall execute the same order in the same manner like a decree of that Court.

Protection  
of action  
taken in  
good faith.

444. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

Non-disclo-  
sure of  
information  
in certain  
cases.

445. Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any Court, tribunal or other authority as to wherefrom he got any information which—

(a) has led the Central Government to direct a special audit under section 413 or to order an investigation under sections 192, 193, 203 or 204; or

(b) is or has been material or relevant in connection with such special audit or investigation.

Protection  
of emplo-  
yees during  
investigation  
by inspector  
or pendency  
or proceed-  
ing before  
Court in  
certain  
cases.

446. (1) If—

(a) during the course of any investigation of the affairs and other matters of or relating to a company, body or person under section 192, section 193 or section 194, or of the membership and other matters of, or relating to a company or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of, or relating to, a company, body or person; under section 203 or section 204; or

(b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter V of Part VI, such company, body or person proposes

(i) to discharge, or

(ii) to punish, whether by dismissal, removal, reduction in the rank or otherwise,

any employee, the company, body or person, as the case may be, shall send by post to the Tribunal previous intimation in writing of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, body or person concerned.

(2) If the company, body or person concerned does not receive within thirty days of the sending of the previous intimation of the action proposed against the employee, any notice of the objection from the Tribunal, then and only then, the company, body or person concerned may proceed to take against the employee the action proposed.

(3) If the company, body or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within thirty days of the receipt of the notice of the objection, prefer an appeal to the Court in the prescribed manner and on payment of the prescribed fee.

(4) The decision of the Court on such appeal shall be final and be binding on the

Tribunal and on the company, body or person concerned.

(5) For the removal of doubt, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

447. (1) Where the Central Government or Tribunal is required or authorised by any provision of this Act,—

- (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act—

- (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter; or
- (b) in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter; or
- (c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.

448. Notwithstanding anything contained in this Act,—

- (a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay;
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

Condonation of delays in certain cases.

Annual  
report by  
Central  
Govern-  
ment.

449. The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament within one year of the close of the year to which the report relates.

*Schedules, forms and rules*

Power to  
alter  
Schedules.

450. (1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act:

Provided that the power conferred under this sub-section shall include the power to specify different forms of accounts for different class of companies.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

Power of  
Central  
Government  
to make  
rules.

451. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (i) the salient features of abridged prospectus under clause (1) of section 2;
- (ii) accounting standards under clause (2) of section 2;
- (iii) form of return to be filed with the Registrar under proviso to section 5;
- (iv) the fee for obtaining a copy of memorandum, articles and every other agreement and resolution, if not embodied in memorandum or articles under sub-section (2) of section 19;
- (v) the means of service of a document on a company or on its officer under sub-section (1) of section 25;
- (vi) the rules required to be followed by a foreign company under clause (f) of section 28;
- (vii) the provisions of the Act to be complied with by a foreign company with regard to the business carried on by such company in India under sub-section (2) of section 29;

(viii) the time within which and particulars with which a return be delivered to the Registrar under section 31;

(ix) the form of list relating to the place of business established by foreign company in India to be filed with the Registrar under sub-section (3) of section 32;

(x) the rules, subject to which such modification or adaptation made in section 130, is applicable on foreign company under clause (b) of sub-section (3) of section 38;

(xi) fees payable to the Registrar for registration of any document under section 39;

(xii) the manner of certification of the translated copy of instrument, enactment or provision, or copies thereof of a company, if not in English, under sub-clause (iii) of clause (a) of sub-section (1) of section 40;

(xiii) the statement with respect to matter relating to accounts of the company to be included in a prospectus under proviso to clause (c) of sub-section (4) of section 40;

(xiv) the manner of certification of the translated copy of contract under sub-section (2) of section 42;

(xv) requirement of disclosures in prospectus and letter of offer, etc., and rules applicable for offer of Indian Depository Receipts under section 43;

(xvi) the matter to be stated and reports to be set out in the prospectus under sub-section (2) of section 48;

(xvii) matters to be prescribed under proviso to sub-section (7) of section 48;

(xviii) the documents to be attached, in case of a prospectus issued generally, under clause (b) of sub-section (1) of section 50;

(xix) the time within which information memorandum is required to be filed under sub-section (3) of section 51;

(xx) the period of accepting the minimum subscription and for prescribing the rate of interest which would be payable by the directors jointly and severally in case the money so received is not repaid within eight days after the expiry of the period under sub-section (7) of section 62;

(xxi) the rate of interest required to be paid on moneys or application money in excess of allotment if not repaid within eight days after such moneys becomes due for the repayment;

(xxii) the manner of verification of copies of contract under clause (b) of sub-section (1) of section 66;

(xxiii) the particulars of the contract to be filed with the Registrar in case the contract is not reduced in writing for allotment for consideration other than in cash under sub-section (2) of section 66;

(xxiv) the upper limit of percentage of commission which can be paid to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure

subscription of any securities of the company under sub-section (1) of section 67;

(xxv) the form declaration of solvency by a company under sub-section (5) of section 69;

(xxvi) the particulars to be entered in the register to be maintained under sub-section (8) of section 69;

(xxvii) the particulars which a notice shall contain under clause (b) of sub-section (1) of section 74;

(xxviii) the conditions in accordance with which, every employee's stock option shall be made under clause (c) of sub-section (7) of section 74;

(xxix) the manner of nomination under sub-section (2), sub-section (3), sub-section (4), and the manner in which the nomination is varied or cancelled under sub-section (4) and the manner to appoint a person to become entitled to share in or debenture of the company, in the event of death, during the minority, of a minor nominee under sub-section (5) of section 75;

(xxx) the time and manner of issue or renew of a certificate of issue of duplicate thereof, the form of certificate or a duplicate thereof, the particulars to be entered in the register of members, the form of such register, the fee on payment of which, the terms and conditions on which a certificate may be renewed or a duplicate thereof may be issued under sub-section (4) of section 76;

(xxxi) the rules and conditions relating to the equity share capital with differential rights as to dividend, voting or otherwise of a company limited by share under sub-clause (ii) of clause (a) of section 78;

(xxxii) the fee to be accompanied with an appeal or application to Tribunal under sub-section (11) of section 97;

(xxxiii) the form in which and the period within which a trust deed for securing any issue of debenture be executed under sub-section (1) of section 103;

(xxxiv) the sum to be payable for obtaining the copies of the trust deed under sub-section (2) of section 103;

(xxxv) the fee payable for obtaining a copy of Trust Deed for securing issue of debenture under sub-section (1) of section 106;

(xxxvi) to lay down, the limits up to which, the manner in which and the conditions subject to which deposit may be invited or accepted under sub-section (3) of section 112;

(xxxvii) the form and manner in which an advertisement including therein a statement showing the financial position of the company is to be issued under clause (b) of sub-section (4) of section 112;

(xxxviii) the categories of amounts not to be included in deposits under *Explanation* to sub-section (12) of section 112;

(xxxix) the particulars of charge created or evidenced, and the manner in which the copy of instrument be verified and fee on payment of which instrument or copy thereof be allowed to be filed with the Registrar under sub-section (1) of section 113;



(xl) the manner of verification of copy of the instrument creating or purporting to create the charge under sub-section (4) of section 113;

(xli) the manner in which the copy of the deed is to be verified under sub-section (1) of section 115;

(xlii) the amount of fee payable on, the form and manner in which, and the period within which the particulars of all the charges be forwarded to Registrar under sub-section (2) of section 116;

(xliii) the form in and manner in which the document of charges be filed and the form in which such document be kept in the register under clause (a) of sub-section (4) of section 116;

(xliv) the fee on payment of which an inspection of the register be made under sub-section (6) of section 116;

(xlv) the form for keeping chronological index of charges in such index and the particulars of charges under sub-section (7) of section 116;

(xlvi) the fee on payment of which the Registrar shall enter the facts in the register of charges under sub-section (1) of section 119;

(xlvii) the form in which intimation of payment or satisfaction of charge be sent and the fee payable under sub-section (1) of section 120;

(xlviii) the fee for inspection of register of charges under sub-section (5) of section 124;

(dix) safeguards to be provided for keeping records of the particulars of the members and holders of debentures in the computer floppy or diskettes under sub-section (10) of section 128;

(i) the upper limit of remuneration of employees for the purpose of clause (h) of sub-section (1), and the form in which the annual returns is to be filed under sub-section (1) of section 130;

(ii) the form in which the duly verified declaration be filed with the Registrar under clause (b) of sub-section (1) of section 131;

(iii) the preservation and disposal of the register, index and returns under sub-section (2) of section 132;

(liii) payment of sum to be made by other than members and debenture-holders of the company for inspection under clause (b) of sub-section (3) of section 132;

(liv) payment of sum to be made for obtaining copies of register of members, under clause (b) of sub-section (4) of section 132;

(lv) application of adaptations and modifications of certain sections of the Act under sub-section (2) of section 135;

(lvi) the form for the instrument appointing a proxy under sub-section (2) and the time within which such instrument be furnished under clause (b) of sub-section (6) of section 141;

(lvii) the intervals within which the minutes of proceedings kept on loose-leaf style be bound under sub-section (3) of section 152;

(lviii) sums to be paid by a member for obtaining a copy of the minutes proceedings of general meeting under sub-section (2) of section 153;

(lix) higher fees that may be payable to a director for attending a meeting of Board or a Committee thereof under proviso to sub-section (2) of section 155;

(lx) the percentage of profits to be transferred to the reserves under sub-section (4) of section 160;

(lxi) the forms of statement in which the particulars of unpaid or unclaimed dividend transferred to the Central Government is to be furnished under sub-section (5) of section 161;

(lxii) the particulars relating to utilisation of materials or labour or to the other items of cost by any class of companies under clause (d) of sub-section (1) of section 163;

(lxiii) the form of preparation of consolidated accounts under sub-section (2) of section 168;

(lxiv) the manner in which the conservation of energy, technology absorption, foreign exchange earnings and outgo to be contained in a report of Board under clause (e) of sub-section (1) of section 173;

(lxv) the manner in which the measures taken for protection of environment to be contained in a report of the Board under clause (f) of sub-section (1) of section 173;

(lxvi) the form in which a statement showing the particulars of remuneration to be paid during the financial year to which it relates to every director be included in the Board's report under clauses (b) and (c) of sub-section (4) of section 173;

(lxvii) the form of statement to be made by company or society is to be made under sub-section (1) of section 179;

(lxviii) the form in which and the time within which the auditor shall make his report under sub-section (4) of section 189;

(lxix) the guidelines for seizure of documents by Registrar under sub-section (5) of section 191;

(lxx) the guidelines for seizure of documents by inspectors under sub-section (5) of section 196;

(lxxi) the fee on payment of which a copy of the report be furnished to any person specified under sub-clause (i) and sub-clause (ii) of clause (b) of sub-section (2) of section 197;

(lxxii) the manner in which a copy of any report of any inspector or inspectors be authenticated under section 202;

(lxxiii) specifying such sum of paid-up share capital of a public company or a private company with a subsidiary of public company for the purpose to have a managing or whole-time director or manager under sub-section (1) and the form of return for filing the particulars of appointment under sub-section (2) of section 220;

(lxxiv) the form for disclosure of the substantial interest in appointment of the sole selling agent in India the Board's report under the proviso to sub-section (1) of section 232;

(lxxv) the form for disclosure giving particulars relating to the appointment of a sole selling agent for any area outside India as a separate item in the board's report under sub-section (2) of section 232;

(lxxvi) the conditions subject to which loan may be given to any managing or whole-time director under first proviso to sub-section (1) of section 233;

(lxxvii) the form of return to be filed with the Registrar under sub-section (2) of section 238;

(lxxviii) the fee for inspection to be paid by a person other than member of the company under sub-section (4) of section 238;

(lxxix) the fee to be paid for inspection of register under sub-section (2) of section 240;

(lxxx) the upper limit of total monthly remuneration for any office or place of profit under clause (b) of sub-section (1) of section 244;

(lxxxi) the form of certificate and conditions to be specified in the certificate to be attached with the report of the Board under sub-section (5) of section 256;

(lxxxii) the manner of notices to be given under sub-section (1) and clause (a) of sub-section (2) of section 268;

(lxxxiii) the information to be attached to offer of a scheme or contract under sub-clause (i) of clause (a) of sub-section (5) of section 268;

(lxxxiv) determination of price for acquiring the shares under sub-section (2) of section 269;

(lxxxv) the authority for assessing the compensation to be paid to the member or creditor under sub-section (3) of section 270;

(lxxxvi) the form for obtaining consent of one or more of the members of a company under sub-section (6) of section 272;

(lxxxvii) the terms and conditions for the appointment of Company Liquidator and the remuneration payable to him under sub-section (3) of section 297;

(lxxxviii) the form of a statement of affairs to be furnished under sub-section (4) of section 302;

(lxxxix) the manner for keeping the proper books by the Company Liquidator under sub-section (1) of section 310;

(xc) the manner of forwarding the copy of the order under sub-section (2) of section 313;

(xci) the period for filing an appeal in the Court under sub-section (2) of section 314;

(xcii) the form of the statement and the particulars with respect to proceedings under clause (b) of sub-section (1) of section 337 and 346 respectively;

(xciii) the form in which a notice of appointment is to be delivered under sub-section (1) of section 351;

(xciv) the emoluments of the persons to be included under "Employees other than Workmen" under sub-clause (iv) of clause (b) of sub-section (3) of section 357;

(xcv) exceptions where formal proof of debt not required under sub-section (d) of section 359;

(xcvi) the rule for the disposal of books and papers of company in the cases to be specified under clause (b) of sub-section (3) of section 376;

(xcvii) the form of statement and the particulars to be contained therein under sub-section (1) of section 377;

(xcviii) the fees to be paid to inspect the statement under sub-section (3) of section 377;

(xcix) the form of statement and the particulars to be included therein in respect of dividend payable and assets refundable under sub-section (3) of section 379;

(c) the fees payable for registration as a company under section 394;

(ci) the manner of keeping the documents for inspection and the fees for inspection of document under clause (a) of sub-section (1) of section 407;

(cii) the fees payable for obtaining certified copies under clause (b) of sub-section (1) of section 407;

(ciii) the amount of fees and manner of payment thereof to the Registrar under sub-section (1) of section 409;

(civ) the fees to be paid for belated filing under sub-section (2) of section 409;

(cv) the manner of payment to be made into the Public Account under section 410;

(cvi) utilisation of Investors' Education and Protection Fund under sub-section (3) of section 414;

(cvii) the form of maintaining separate accounts under sub-section (4) of section 414;

(cviii) the experience, qualifications and seniority of judicial members of the Tribunal under sub-section (3) of section 416;

(cix) the experience, qualifications and seniority of the technical member of the Tribunal under sub-section (4) of section 416;

(cx) the terms and conditions of service of the President, Vice-President and other members and staff of the Tribunal under sub-section (7) of sections 416;

(cxi) the powers of a person named for inquiry under sub-section (5) of section 424;

(cxii) the manner in which and the fee on payment of which an appeal may be preferred to the Court under sub-section (3) of section 446;

(cxiii) a fee for an application and different fees for applications in respect of different matters be made under sub-section (2) of section 447;

(cxiv) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereof have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

452. (1) The Supreme Court, after consulting the High Courts,—

Power of  
Supreme  
Court to  
make rules.

(a) shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed, and may make rules providing for all such matters as may be prescribed, except those reserved to the Central Government under this Act;

5 of 1908.

(b) may make rules consistent with the Code of Civil Procedure, 1908—

(i) as to the mode of proceedings to be had for winding up a company in High Courts;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 263.

(iv) for giving effect to the provisions of this Act as to the reduction of the capital; and

(v) generally for all applications to be made to the Court under the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may, by such rules, enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the following matters, that is to say:—

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the Liquidator;

(d) the making of calls; and

(e) the fixing of a time within which debts and claims shall be proved;

to be exercised or performed by the Company Liquidator or any other liquidation as an officer of the Court, and subject to the control of the Court:

Provided that the Liquidator shall not, without the special leave of the Court, rectify the register of members or make any call.

(3) Until rules are made by the Supreme Court as aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act, shall continue to be in force in so far as they are not inconsistent with the provisions of this Act in that High Court and in courts subordinate thereto.

#### *Repeals and savings*

Repeal of Acts.

453. The Companies Act, 1956 and the Registration of Companies Act, Sikkim, 1961 are hereby repealed. 1 of 1956.

Saving of orders, rules, etc., in force at commencement of this Act.

454. Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; or the Acts repealed under section 453; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

Saving of pending proceedings for winding up.

455. Where the winding up of a company has commenced before the commencement of this Act—

(i) sub-section (7) of section 379 of the Companies Act, 1956 shall apply in respect of any moneys paid into the Companies Liquidation Account whether before or after such commencement; and 1 of 1956.

(ii) the other provisions with respect to winding up contained in this Act shall not apply, but the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed—

(a) sections 305, 351 and 350 of the Companies Act, 1956 shall, as far as may be, also apply in relation thereto; 1 of 1956.

(b) the Liquidator appointed by the Court and functioning in any such winding up shall in such manner and at such time as may be prescribed by the Central Government, pay the moneys received by him as such Liquidator, into the public account of India in the Reserve Bank of India.

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456. Notwithstanding the repeal of the Act, under section 453—

(a) any document referring to any provision in the previous Companies laws shall be construed as referring to the corresponding provision in this Act;

(b) any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in a general meeting by the company, or in any other instrument, or in any law in force immediately before the commencement of this Act, shall, with effect on and from such commencement, be construed as a reference to a special resolution;

(c) any person appointed to any office under or by virtue of any previous companies laws shall be deemed to have been appointed to that office under or by virtue of this Act;

(d) the offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act;

(e) any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act;

(f) all funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under previous companies laws; and

(g) nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

Construction of references to former enactments in documents.

1 of 1956. 457. (1) Nothing in this Act shall affect Tables A to F in Schedule I annexed to the Companies Act, 1956 or any part thereof as they stood immediately before the commencement of this Act in so far as any of the tables apply to any company existing at such commencement.

Saving of certain provisions of, and rules under previous companies law.

1 of 1956 (2) Notwithstanding the repeal of the Companies Act, 1956, the provisions of Schedule I, Schedule II, Schedule III, Schedule IV, Schedule V, Schedules VII to XII and Schedule XV, of that Act as they stood immediately before the commencement of this Act shall continue to apply to companies to which the said provisions applies, even after such commencement as if they are contained in this Act until suitable provisions therefor are made by the rules under the corresponding provisions of this Act.

10 of 1897. 458. The mention of particular matters in sections 454 to 457 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897, with respect to the effect of repeals.

Section 6 of the General clauses Act, 1897 to apply in addition to sections 454 to 457.

# SCHEDULE I

(See section 169)

## [PART I - FORM OF BALANCE-SHEET]

The balance sheet of a company shall be either in horizontal form or vertical form:

### A. HORIZONTAL FORM

Balance Sheet of \_\_\_\_\_  
[Here enter the name of the Company]

As at \_\_\_\_\_  
[Here enter the date as at which the balance-sheet is made out]

Instructions in accordance with which liabilities should be made out	LIABILITIES		ASSETS		Instructions in accordance with which assets should be made out
	Figures for the previous year Rs. (b)	Figures for the current year Rs. (b)	Figures for the previous year Rs. (b)	Figures for the current year Rs. (b)	
<p>*Terms of redemption or conversion (if any), of any redeemable preference capital to be stated, together with earliest date of redemption or conversion.</p> <p>Particulars of the different classes of shares to be given:</p> <p>a) On basis of varying differential rights</p> <p>b) Preference as to dividend and repayment rights.</p> <p>Number of shares and nominal value in respect of subscribed, issued and called up capital shall be shown after excluding number and nominal value of shares bought back were during the year, the company has bought back any of its shares, the number and nominal value of such shares and important</p>	<p><b>*SHARE CAPITAL</b></p> <p>Authorised _____ shares of Rs. _____ each</p> <p>+ Issued (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class) _____ shares of Rs. _____ each.</p> <p>+ Subscribed (distinguishing between the various classes of Capital and stating the particulars specified below in respect of each class).</p> <p>(c) _____ shares of Rs. _____ each Rs. _____ called up.</p> <p>Of the above shares _____ shares are allotted as fully paid up pursuant to a contract without payments being received in cash.</p>		<p><b>*FIXED ASSETS</b></p> <p>Distinguishing as far as possible between expenditure upon—</p> <p>(a) brand equity or goodwill, (b) land, (c) buildings, (d) leasehold (specify nature), (e) rail-way sidings, (f) plant and machinery, (g) ships, (h) aircrafts, (i) furniture and fittings, (j) development of property, (k) patents, trade marks, designs &amp; other similar rights, (l) live-stock, (m) vehicles, (n) capital work in progress, and (o) others (to be specified)</p>		<p>*Under each head the original cost, and the additions thereto and adjustment on account of revaluation, and deductions therefrom during the year, and the total depreciation written off adjusted to revaluation or provided up to the end of the year to be stated.</p> <p>Where the original cost aforesaid and additions and deductions thereto, relates to any fixed asset which has been acquired from a country outside India and in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there has been an increase or reduction in the liability of the company, as expressed in Indian currency, for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly in any</p>



terms on which shares have been bought back shall be shown by way of footnote.

Terms of Conversion of any Depository receipt to be stated together with earliest date of conversion or redemption. Shares reissuable under conversion option to be specified.

+Particulars of any option including Employees Stock Option (ESOP) on unissued share capital to be specified by way of footnote.

(Specify the source from which bonus shares are issued, e.g. capitalization of Profits or Reserves or from Security Premium Account).

Any capital profit on cancellation of bought back Shares or on purchase share below par value should be transferred to Capital Reserve.

\*Additions and deductions since last balance-sheet to be shown under each of the specified heads.

The word "fund" in relation to any "Reserve" should be used only where such Reserve is specifically represented by earmarked investments.

[Of the above shares \_\_\_\_\_ shares are allotted as fully paid up by way of bonus shares].  
Less: Calls unpaid.

- (i) By Directors
- (ii) By Others

Less: Par value of shares bought back  
[+Add: Forfeited shares (amount originally paid-up)].

#### \*RESERVES

- (1) Securities Premium Account

- (2) Capital Reserves

- (3) Debenture Redemption Reserve.

- (4) Capital Redemption Reserve

- (5) Revaluation Reserve

- (6) Other Reserves specifying the nature of each Reserve and the amount in respect thereof:

- (a) Proposed additions to Reserves

- (b) Balance in Profit and loss account after providing allocations e.g. Dividend, Bonus and Reserves.

- (7) Sinking Funds

#### QUASI EQUITY

Instrument for raising capital including those having features of both debt and equity instruments.

#### INVESTMENTS

Showing nature of investments and mode of valuation, for example, cost or market value and distinguishing between—

- (1) Investments in Government or Trust Securities

- (2) Investments in shares, debentures or bonds/GDRs/IDRs showing separately shares fully paid-up and partly paid-up and also distinguishing the different classes of shares and showing also similar details of investments in shares, debentures or bonds of subsidiary companies.

- (3) Immovable properties

- (4) Investments in the capital of partnership firms.

- (5) Amount deposited in Portfolio Management Scheme.

#### CURRENT ASSETS, LOANS AND ADVANCES

##### (A) CURRENT ASSETS

- (1) Interest accrued on Investments.

- (2) Stores and spare parts

- (3) Loose Tools

foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be deducted from the cost, and the amount arrived at after such addition or deduction shall be taken to be the cost of the fixed asset.

Explanation:

(a) Foreign currency for the purpose of the Schedule, means any currency other than the Indian Currency.

(b) Rate of Exchange for the purposes of his schedule means the rate quoted by a Bank or other authorised dealer in Foreign Exchange at which the Rupee may be exchanged for a unit of a Foreign Currency or Foreign Currency may be changed for a Rupee.

Where there has been a revaluation of asset(s) in the current year the fact and basis thereof shall be stated.

Under each head the assets which are not reflected as a specific item because it is held as lessee. The description and estimated value there of shall be disclosed by way of a statement attached.

The original cost of Assets developed on Build Operate Own and Transfer (BOOT) basis along with material term to be disclosed separately by way of a note.

Description, unit value and material terms to be indicated in respect of each class of instrument.

Long-Term loans for the purposes of this schedule means loans, which fall due for payment in a period more than twelve months from the date on which they are received. In determining when a loan or an advance falls due for payment, due consideration shall be given to the substance of the relevant transaction.

Rate of interest, date of issue

\*\* Terms of redemption or conversion (if any) or debts issued to be stated together with earliest date of redemption or conversion.

Particulars of any redeemed debentures which the company has power to reissue shall be given.

Interest accrued and due on any Loans should be included under the respective sub-heads under Loans.

The nature of the security to be specified in each case.

Short Term Loan would include those which fall due for repayment within twelve months from their receipt.

Where loans have been guaranteed by manager and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.

The nature of security to be specified in each case.

## SECURED LOANS

### (A) LONG TERM

- \*\* (1) Debentures
- (2) Loans and Advances from Banks
- (3) Loans from Financial Institutions
- (4) Loans and Advances from subsidiaries.
- (5) Other Loans and Advances (specify nature).

### (B) SHORT TERM

- (i) Banks
- (ii) Financial Institutions
- (iii) Subsidiary Companies
- (iv) Others (specify nature).

## UNSECURED LOANS

### LONG TERM

- (1) Fixed Deposits
- (2) Loans and Advances from subsidiaries

### SHORT TERM LOANS & ADVANCES

- (1) From Banks
- (2) From others
- Other Loans and Advances (specify nature)

### (4) Stock-in-Trade

### (5) Works-in-Progress

### (6) Sundry Debtors—

- (a) Debts outstanding for a period exceeding six months.

- (b) Other debts  
(Less: Provision)

### (7) Assets developed on the Basis of Build Operate and Transfer and Lease.

### (8) Cash balance on hand.

### (9) Cheques & Drafts in hand.

### (10) Bank balances—

- (a) with Scheduled Banks;
- (b) with others.

### (B) LOANS AND ADVANCES

### (11) (a) Advances and Loans to subsidiaries.

- (b) Advances and loans to partnership firms in which the company or any of its subsidiaries is a partner

### (12) Bills of Exchange

### (13) Advances recoverable in cash or in kind or for value to be received, e.g., Rates, Taxes, Insurance, etc.

\*Aggregate amount of company's quoted investments and also the market value thereof shall be shown.

\*Aggregate amount of company's unquoted investment shall also be shown.

See foot note(1)

A summary of financial position as per latest available balance sheet of the firm shall be annexed to the balance sheet of the company.

Mode of valuation of stock shall be stated and the amount in respect of raw material shall also be stated separately where practicable.

Mode of valuation of Works-in-Progress shall be stated.

In regard to sundry debtors particulars to be given separately of (a) debts considered good and in respect of which the company is fully secured; and (b) debts considered good for which the company holds no security other than the debtor's personal security; and (c) debts considered doubtful

Loans from Directors, Manager, should be shown separately.

Where loans have been guaranteed by manager and/or directors a mention thereof shall also be made and also the aggregated amount of such loans under each head.

The amount shall be stated before deduction of Income-tax, except that in the case of tax-free dividends the amount shall be shown free of Income-tax and the fact that it is so shown shall be stated.

The amount of any guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each such class are in arrear shall be stated.

The period for which interest is in arrears on deposits and amount of overdue deposits, if any, as shall be stated.

## CURRENT LIABILITIES AND PROVISIONS:

### A. CURRENT LIABILITIES

- (1) Acceptances
- (2) Sundry Creditors
- (3) Subsidiary Companies
- (4) Advance payments and unexpired discounts for the portions for which value has still to be given.

- (5) Unclaimed Dividends

- (6) Interest due on fixed deposit remaining unpaid.

- (7) Interest accrued but not due on loans.

- (8) Other Liabilities (if any)

### B. PROVISIONS

- (8) Provision for Taxation

- (9) Proposed Dividends.

- (10) For contingencies.

- (11) For Provident Fund Scheme.

- (12) For insurance, pension and similar staff benefit schemes.

- (13) Other provisions

A foot note to the balance-sheet may be added to show separately:—

1. Claims against the company not acknowledged as debt.

(14) Balances with Customs, Port Trust, etc. (where payable on demand) or bad.

### MISCELLANEOUS EXPENDITURE (to the extent not written off [or adjusted]).

1. Preliminary expenses.
2. Expenses including commission or brokerage on underwriting or subscription of securities.

3. Discount allowed on the issue of securities.

4. Interest paid out of capital during construction (also stating the rate of interests).

5. Development expenditure not adjusted.

6. Other items (specifying nature).

### PROFIT AND LOSS ACCOUNT

Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member to be separately stated.

Debts due from other companies under the same management as explained in Note 14 to be disclosed with the names of the Companies.

The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.

The provision to be shown under this head should not exceed the amounts of debts stated to be considered doubtful or bad and any surplus of such provision, if already created, should be shown at every closing under "Reserve and Surplus" (in the Liabilities side) under a separate sub-head "Reserve for Doubtful or Bad Debts."

In regard to bank balances, particulars to be given separately of—

a) the balances lying with Scheduled Banks on current accounts, call accounts and deposit accounts;

b) the names of bankers other than Scheduled banks and balances lying with each such banker on current accounts, call accounts and deposit accounts and the maximum amount outstanding at any time during the year from each such bankers; and

2. Uncalled liability on shares partly paid.
3. Arrears of fixed cumulative dividends.
4. Estimated amount of contracts remaining to be executed on capital account and not provided for.
5. Estimated amount of contractual future obligations e.g. with regard to assets acquired on finance lease.
6. Other money for which the company is contingently liable.

c) the nature of the interest, if any, of any director or his relative in each of the bankers (other than scheduled banks) referred to in (b) above.

The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also.

[Show here the debit balance of profit and loss account carried forward after deduction of the uncommitted reserves, if any.]

## B. VERTICAL FORM

Name of the Company \_\_\_\_\_

Balance Sheet as at \_\_\_\_\_

	Schedule No.	Figures as at the end of current financial year Rs.	Figures as at the end of previous financial year Rs.
<b>I. Sources of funds:</b>			
(1) Share holder's funds			
(a) Capital			
(b) Reserves and Surplus			
(c) Quasi Equity			
(2) Loan funds			
Secured loans			
(a) Long Term			
(b) Short Term			
Unsecured loans			
<b>TOTAL:</b>			
<b>II. Applications of funds:</b>			
(1) Fixed assets			
(a) Gross block			
(b) Less depreciation			
(c) Net block			
(d) Capital work-in-progress			
(2) Investments			
(3) Current assets, loans and advances:			
(a) Inventories			
(b) Sundry debtors			
(c) Cash and bank balances			
(d) Other current assets			

(e) Amount deployed

in Port-Folio Management Scheme

(f) Assets developed on the basis of Built,  
Operate and Transfer or Lease

(g) Loans and advances

Less:

Current liabilities and provisions:

(a) Liabilities

(b) Provisions

(4) Net current assets

(a) Miscellaneous expenditure to the extent  
not written off or adjusted

(b) Profit and Loss account

TOTAL:

Notes:

1. Details under each of the above items shall be given in separate Schedules. The Schedules shall incorporate all the information required to be given under A—Horizontal Form read with notes containing general instructions for preparation of balance sheet.

2. The Schedules, referred to above, accounting policies and explanatory notes that may be attached shall form an integral part of the balance sheet.

3. Figures in the balance sheet may be rounded off as indicated in Note (b) contained in general instruction for preparation of Balance Sheet.

4. A foot-note to the balance sheet may be added to show separately contingent liabilities.

## PART II

## Requirements as to Profit and Loss Account

[See section 169]

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 168 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.

2. The profit and loss account—

(a) shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and

(b) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.

3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account, namely:—

(i) (a) The turnover, that is, the aggregate amount of which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company, and indicating the quantities of such sales for each class separately;

(b) Commission paid to sole selling agents under this Act;

(c) Commission paid to other selling agents;

(d) Brokerage and discount on sales, other than the usual trade discount.

(ii) (a) In the case of manufacturing companies,—

(I) The value of the raw materials consumed, giving item-wise break-up and indicating the quantities thereof. In this break-up, as far as possible, all important basic raw materials shall be shown as separate items. The intermediates or components procured from other manufacturers may, if their list is too large to be included in the break-up, be grouped under suitable headings without mentioning the quantities, provided all those items which in value individually account for ten per cent. or more of the total value of the raw material consumed shall be shown as separate and distinct items with quantities thereof in the break-up.

(2) (a) The opening and closing stocks of goods produced, giving break-up in respect of each class of goods and indicating the quantities thereof.

(b) In the case of trading companies, the purchases made and the opening and closing stocks, giving break-up in respect of each class of goods traded in by the company and indicating the quantities thereof.

(c) In the case of companies rendering or supplying services, the gross income derived from services rendered or supplied.

(d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if the total amounts are shown in respect of the opening and closing stocks, purchases, sales and consumption of raw material with value and quantitative break-up and the gross income from services rendered is shown.

(e) In the case of other companies, the gross income derived under different heads.

Note 1.—The quantities of raw materials purchases, stocks and the turnover shall be expressed in quantitative denominations in which these are normally purchased or sold in the market.

Note 2.—In the case of trading companies, the imported items shall be classified in accordance with the classification adopted by the Director General of Foreign Trade in granting the import licences.

Note 3.—In giving the break-up of purchases, stocks and turnover, items like spare parts and accessories, the list of which is too large to be included in the break-up, may be grouped under suitable headings without quantities, provided all those items, which in value individually account of ten per cent. or more the total value of purchases, stocks, or turnover, as the case may be, are shown as separate and distinct items with quantities thereof in the break-up.

(iii) In the case of all concerns having works-in-progress, the amounts for which such works have been completed at the commencement and at the end of the accounting period.

(iv) The amount provided for depreciation, renewals or diminution in value of fixed assets.

If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated and the quantum of arrears of depreciation computed in accordance with the Act shall be disclosed by way of a note.

(v) The amount of interest on the company's debentures, loans and other loan stating separately the amount of interest, if any, paid or payable to the managing directors and the manager. The amount of interest on debentures, loans and other liabilities outstanding for a period exceeding six months from the date on which it became payable shall be stated separately.

(va) The amount of charge for income-tax and other tax payable to Indian or Foreign auditors to be given separately on profits, including, where practicable, with Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing, where practicable, between income-tax and other taxation.

(vi) The amounts reserved for—

(a) repayment of share capital; and

(b) repayment of loans.

(vii) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance-sheet is made up.

(b) The aggregate, if material, of any amounts withdrawn from such reserves.

(viii) (a) The aggregate, if material, of the amounts to set aside to provisions made for meeting specific liabilities, contingencies or commitments.

(b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(ix) Expenditure incurred on each of the following items, separately for each item—

(a) Consumption of stores and spare parts.

(b) Power and fuel.



(c) Rent.

(d) Repairs to buildings.

(e) Repairs to machinery.

(f) (1) Salaries, wages and bonus.

(2) Contribution to provident and other funds.

(3) Workmen and staff welfare expenses to the extent not adjusted from any previous provision or reserve.

Note 1.—Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

(g) Insurance.

(h) Rates and taxes, excluding taxes on income.

(i) Miscellaneous expenses:

Provided that any item under which the expenses exceed one per cent. of the total revenue of the company or Rs. 50,000 whichever is higher shall be shown as a separate and distinct item against an appropriate account head in the Profit and Loss Account and shall not be combined with any other item to be shown Under 'Miscellaneous expenses'.

(x) (a) The amount of income from investments, distinguishing between trade investments and other investments.

(b) Other income by way of interest, specifying the nature of the income.

(c) The amount of income-tax deducted if the gross income is stated under sub-paragraphs (a) and (b) above.

(xi) (a) Profits or losses on investments showing distinctly the extent of the profits and losses earned or incurred on account of membership of a partnership firm to the extent not adjusted from any previous provision or reserve.

Note.—Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

(b) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.

(c) Miscellaneous income.

(xii) (a) Dividends from subsidiary companies.

(b) Provisions for losses of subsidiary companies.

(xiii) The aggregate amount of the dividends paid, and proposed, and stating with details of tax deduction if applicable.

(xiv) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.

4. The profit and loss account shall also contain or give by way of a note detailed information, showing separately the following payments provided or made during the financial year to the directors (including managing

directors), or manager, if any, by the company, the subsidiaries of the company and any other person—

(i) managerial remuneration paid or payable during the financial year to the directors (including managing directors), manager, if any, under the Act.

(ii) other allowances and commission including guarantee commission (details to be given);

(iii) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);

(iv) pensions, etc.,—

(a) pensions,

(b) gratuities,

(c) payments from provident funds, in excess of own subscriptions and interest thereon,

(d) compensation for loss of office,

(e) consideration in connection with retirement from office.

5. The profit and loss account shall contain or give way of a note a statement showing the computation of net profits in accordance with relevant details of the calculation of the commissions payable by way of percentage of such profits to the directors (including managing directors), or manager (if any).

6. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, whether as fees, expenses or otherwise for services rendered—

(a) as auditor;

(b) as adviser, or in any other capacity, in respect of—

(i) taxation matters;

(ii) company law matters;

(iii) management services; and

(c) in any other manner.

7. In the case of a manufacturing companies, the profit and loss account shall also contain, by way of a note in respect of each class of goods manufactured, detailed quantitative information in regard to the actual production:—

Note 1.—The actual production in respect of the finished products meant for sale shall be mentioned. In cases where semi-processed products are also sold by the company, separate details thereof shall be given.

Note 2.—Information regarding production shall be disclosed for each classes of goods, for production of the same item at different places in the Indian Trade Classification referred to in Part II will be followed for this purpose.

8. The profit and loss account shall also contain by way of a note the following information, namely:—

(a) value of imports calculated on C.I.F. basis by the company during the financial year in respect of —

(i) raw materials;

- (ii) components and spare parts;
- (iii) capital goods;
- (b) expenditure in foreign currency during the financial year on account of royalty, know-how, professional, consultation fees, interest, and other matters;
- (c) value of all imported raw materials, spare parts and components consumed during the financial year as the value of all indigenous raw materials spare parts and components similarly consumed and the percentage of each to the total consumption;
- (d) the amount remitted during the year in foreign currencies on account of dividends, with a specific mention of the number of non-resident shareholders, the number of shares held by them on which the dividends related;
- (e) earnings in foreign exchange classified under the following heads, namely:—
  - (i) export of goods calculated on F.O.B. basis;
  - (ii) royalty, know-how, professional and consultation fees;
  - (iii) interest and dividend;
  - (iv) other income, indicating the nature thereof.

9. (1) Except in the case of the first profit and loss account laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account shall also be given in the profit and loss account.

(2) The requirement in sub-clause (1) shall, in the case of companies preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which entered on the corresponding date of the previous year.

### Part III

#### Interpretation

7. (1) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires,—

(a) the expression "provision" shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(c) the expression "capital reserve" shall not include any amount regarded as free distribution through the profit and loss account; and the expression "revenue reserve" shall mean any reserve other than a capital reserve;

and in this sub-clause the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability;

is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

8. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, and the expression "unquoted investment" shall be construed accordingly.

#### PART IV

##### Balance Sheet Abstract and Company's General Business Profile

##### I. Registration Details

Name of the company

Registration No.

State Code

(Refer Code List)

Balance Sheet Date

Date

Month

Year

##### II. Capital raised during the year (Amount in Rs. Thousands)

Public Issue

Right Issue

Bonus Issue

Private Placement

##### III. Position of Mobilisation and Deployment of Funds (Amount in Rs. Thousands)

Total Liabilities

Total Assets

##### Source of Funds

Paid-up Capital

Reserves & Surplus

Secured Loans

Unsecured Loans

##### Application of Funds

Net Fixed Assets

Investments

New Current Assets

Misc. Expenditure

## Accumulated Losses

## IV. Performance of Company (Amount in Rs. Thousands)

Turnover      Total Expenditure

+ -Profit/Loss Before Tax    Profit/Loss After Tax

(Please tick appropriate box + for profit, - for loss)

Earning Per Share in Rs. Divided rate%

Cash earnings per share in case of public listed companies shall annex a cash flow statement to the balance sheet. Such a statement shall be prepared and presented for the period covered by the accounts and for the corresponding previous period. Each company should adopt the form of presentation as minimum for the cash flow statement requirement presently prescribed in the agreement and such further disclosures, required by the relevant Accounting Standards.

## V. Generic Names of Three Principal Products/Services of Company (as per monetary terms)

Item Code No.

(ITC Code)

Product Description

Item Code No.

(ITC Code)

Product Description

## NOTES

## General instructions for preparation of balance-sheet.

(1) Where any accounting treatment is inappropriate and the accounting policies are not in conformity with accounting standards, and the financial effect of departures from accounting standards is material, the particulars of such inappropriate treatment and the departure shall be disclosed, together with the reasons therefore.

The information required to be given under any of the items or sub-items in this Form, if it cannot be conveniently included in the balance-sheet itself, shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the balance-sheet. This is recommended when items are numerous.

(2) Where a listed company has raised funds from the public by issuing shares, debentures or other securities, till the completion of the project/accomplishment of the objects of the issue, a separate statement showing the end-use of such funds, namely:—

(a) how much was raised versus the stated and actual project cost;

(b) how much has been utilised in the project upto the end of the financial year; and

(c) where are the unutilised funds, if any, invested and in what form.

(d) in case funds are utilised for purpose other than those stated in Prospectus or similar offer document, nature and Quantum thereof and reasons for the same.

(3) The figures in the balance sheet and profit and loss account, if rounded off, be rounded off to nearest thousand or hundred as may be convenient with turnover in excess of one hundred crores may round of the figure to nearest lakhs of rupees.

(4) In the case of subsidiary companies the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.

The auditor is not required to certify the correctness of such share holdings as certified by the management.

(5) The item "Security Premium Account" shall include details of its utilisation in the manner provided in the act.

(6) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(7) Dividends declared by subsidiary companies after the date of the balance-sheet should not be included unless they are in respect of period which closed on or before the date of the balance sheet.

(8) In case of consolidation of accounts the Consolidated financial Statements (CFS) would be required to disclose the Consolidation Policies, whether line by line, or by Equity Method of Investment Accounting, and comply with Institute of Chartered Accountants principles and standards laid down e.g. elimination of inter-company transactions and balances disclosure of minority interest etc.

(9) Any reference to benefits expected from contracts to the extent not executed shall not be made in the balance sheet but shall be made in the Board's report.

(10) The debit balance in the Profit and Loss account shall be shown as a deduction from the uncommitted reserves, if any.

(11) As regards Loans and Advances, the amounts due from other companies under the same management within as explained in note 14 should be given with the names of the companies the maximum amount due from every one of these at any time during the year must be shown.

(12) Particulars of any redeemed debentures which the company has power to issue should be given.

(13) Where any of the company's debentures are held by a nominee of a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(14) A statement of investments (whether shown under "Investment" or under "Current Assets" as a stock in-trade) whose value exceed two percent of total value of each category other the investment in firm, separately classifying trade investments and other investments should be annexed to the balance-sheet, showing the names of the bodies corporate (including separately the name of the bodies corporate under the same management) in whose shares or debentures, investments have been made (including all investments, whether existing or not, made subsequent to the date as at which the previous balance sheet was made out) and the nature and extent of the investment so made in each such body corporate, provided that in the case of an investment company, that is to say, a company whose principal is the acquisition of shares, stock, debentures or other securities, it shall be sufficient if the statement shows only the investments existing on the date as at which the balance-sheet has been made out. In regard to the investments in the capital of partnership firms, the names of the firms, (with the names of all their partners, total capital and the shares of each partner) as also a net aggregate amount of firms profits and losses as per their last audited account which have not been dealt with in company account shall be given in said statement annexed to the Balance Sheet.

New Definition - same management:

Two bodies corporate shall be deemed to be under the same management—

- (i) if the managing director or manager of the one body,
  - (ii) if a majority of the directors of the body constitute, or at any time within the six months immediately preceding constituted, a majority of the directors of the other body;
  - (iii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate; or
  - (iv) if the holding company of the one body corporate is under the same management as the other body corporate within the meaning of clause (i), clause (ii) or clause (iii); or
  - (v) if one or more directors of the one body corporate while holding, whether by themselves or together with their relatives, the majority of shares in that body corporate also hold, whether by themselves or together with their relatives, the majority of shares in the other body corporate.
- (15) If, in the opinion of the Board, any of the current assets, loans and advances have not a value on realisation in ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.
- (16) Except in the case of the first balance-sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the balance-sheet shall be also given in the balance-sheet. The requirement in this behalf shall, in the case of companies preparing half-yearly accounts, etc., relate to the balance sheet for corresponding date in the previous year.
- (17) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances.
- (18) Current account with directors of and manager whether they are in debit or credit be disclosed separately.
- (19) Loans Debentures or other securities raised by the company in foreign exchange and outstanding shall be disclosed separately.
- (20) Details of the foreign holding in the share capital of the company viz. number of non-resident shareholders and the number of shares held by them in the aggregate in the date of the Balance-sheet.
- (21) With regard to the expenditure during construction, if any, an item-wise statement shall be given as required in the accounting standard.
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## SCHEDULE II

(See sections 152, 224 and 245)

Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government.

## PART I

## Appointments

No person shall be eligible for appointment as a managing or whole-time director a manager(hereinafter referred to as managerial person) of a company unless he satisfied the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

- (i) the Indian Stamp Act, 1899 (2 of 1899),
- (ii) the Central Excise and Salt Act, 1944 (1 of 1944),
- (iii) the industries (Development and Regulation) Act, 1951 (65 of 1951),
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954),
- (v) the Essential Commodities Act, 1955 (10 of 1955),
- (vi) the Securities Contracts (Regulation) Act, 1956 (42 of 1956),
- (vii) the Wealth-tax Act, 1957 (27 of 1957),
- (viii) the Income-tax Act, 1961 (43 of 1961),
- (ix) the Customs Act, 1962 (52 of 1962)
- (x) the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969)
- (xi) the Foreign Exchange Regulation Act, 1973 (46 of 1973),
- (xii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),
- (xiii) the Securities and Exchange Board of India Act, 1992 (15 of 1992),
- (xiv) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(b) he had not been sentenced to imprisonment for any period, or to a fine exceeding ten thousand rupees for the conviction of an offence under this Act;

(c) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent to such approval.

(d) where he is managerial person in more than one company he draws remuneration from one or more



companies subject to the ceiling provided in section III of Part II.

(e) he is a citizen of India;

Provided that where the person, who is not a citizen of India, holds a valid employment visa, no further approval of the Central Government shall be necessary for such employment, if other provisions of the law and of this Schedule have been fulfilled:

## PART II

### Remuneration

#### Section I. Remuneration payable by companies having profits

Subject to the provisions of section 152 and section 245, a company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent. of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent. for all of them together.

#### Schedule II. Remuneration payable by companies having not profits or inadequate profits

Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person, by way of salary, dearness allowances, perquisites and any other allowances, not exceeding ceiling limit of Rs. 14,40,000 per annum or Rs. 1,20,000 per month calculated on the following scale:—

Where the effective capital of a companies is—	Monthly remuneration
(i) less than rupees 1 crore	rupees 40,000
(ii) rupees 1 crore or more but less than rupees 5 crores	rupees 60,000
(iii) rupees 5 crores or more but less than rupees 15 crores	rupees 75,000
(iv) rupees 15 crores or more but less than rupees 100 crores	rupees 90,000
(v) rupees 100 crores or more	rupees 1,20,000

2. The following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section;

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961;

(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service, and

(c) encashment of leave at the end of the tenure.

3. The terms, "salaries" and "perquisites" for the purposes of this Act shall be as per the provisions of Income Tax Act, 1961 and the rules framed thereunder.

4. In addition to the perquisites specified in paragraph 2 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section:

(a) Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.

(b) Holiday passage for children studying outside India/family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and the members of the family from the place of their study or stay abroad to India if they are not residing in India with the managerial person.

(c) Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

*Explanation I.*—For the purposes of section II of this Part, effective capital' means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of security premium account; reserves and surplus (excluding revaluation reserves); long-term loans and deposits repayable after one year (excluding working capital loans, over-draft, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock debentures or other securities), accumulated losses and preliminary expenses not written off.

*Explanation II.*— (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;

(b) In any other case, the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

*Explanation III.*—For the purposes of section II of this Part, family means the spouse, dependent children and dependent parents of the managerial person.

### Section III— Remuneration payable to a managerial person in two companies

Subject to the provisions of section I and II, and managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

## PART III

### Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the secretary of the company or where the company has not appointed a secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate shall be incorporated in the return

filed with the Registrar under sub-section (2) of section 224.

**SCHEDULE III**  
(See sections 159 and 256)

**Rates of Depreciation**

S.No	Nature of assets	Single WDV	Shift SLM	Multiple WDV	Shift SLM
I	(a) Buildings (other than factory building)	5%	2%	—	—
	(b) Factory Building	10%	3%	—	—
II	Plant and Machinery Including Second hand Machinery	15%	5%	25%	9%
III	Office Equipment, Furniture and Fittings, Cars etc.	18%	6%	—	—
IV	Ships and Vessels				
	(a) Ocean going	15%	5%	—	—
	(b) Other Vessels	20%	7%		
V	Specified Machinery				
	1. Artificial silk manufacturing machinery wooden parts	50%	25%	—	—
	2. Cinematograph film Bulbs of studio lights				
	3. Flour mills Rollers				
	4. Glass manufacturing concerns Direct fire glass melting furnaces				
	5. Iron and Steel industries Rolling mill rolls				
	6. Match factories Wooden match frames	50%	25%		
	7. Mineral oil concerns (a)- Plant used in field operations (below ground)-Distribution- returnable packages (b) Plant used in field operations (below ground) but not including assets used in field operations (distribution)- Kerbside pumps including under-ground tanks and fittings.	—	—	—	—

8. Mines and quarries—(a) Tubes, winding ropes, haulage ropes and sand stowing pipes (b) Safety lamps
9. Salt works Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material
10. Sugar works  
Rollers

#### Notes

1. W.D.V. means written down value and S.L.M. means straight line method of charging depreciation;
2. Building includes roads, bridges, culverts, wells and tube wells and factory building excludes officers, godowns, quarters for officers and employees, roads, bridges, culverts, wells and tube wells.
3. Where, during any financial year, any addition has been made to any assets, or where any assets has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be circulated on a pro rata basis from the date on such addition or as the case may be, up to the date on which such assets has been sold, discarded, demolished or destroyed.
4. In the annual accounts following information should also be disclosed:
  - (i) depreciation method used; and
  - (ii) depreciation rates and useful life of assets where they are different from the rates specified in the Schedule.
5. Notwithstanding any thing mentioned in this Schedule depreciation on assets whose actual costs does not exceed Rs.10000/- rupees, shall be provided depreciation at the rate of 100%.

Provided that where aggregate actual cost of individual items of plant and machinery cost Rs. 10000/- or less constitutes more than 10% of the total actual costs of plant and machinery rates of depreciation applicable to such items shall be the same as specified in item (ii) of the Schedule.

## STATEMENT OF OBJECTS AND REASONS

The Companies Act, 1956 has been in operation for the last forty years. In the last four decades, the economy has undergone considerable changes and the Companies Act, 1956 was amended as many as seventeen times.

2. The objectives of liberalisation, deregulation, simplification of laws, rules, procedure and changing economic, corporate and international corporate market require that the law on Companies—

- (i) be moulded in tune with the changing economic environment;
- (ii) be responsive to the changing corporate practices;
- (iii) should incorporate appropriately the concepts developed in the international corporate market;
- (iv) should protect the rights of investors, depositors, employees, creditors and other participants;
- (v) should restore corporate democracy and impose extensive obligations on the Board of Directors;
- (vi) should categorise the companies and provide for different degrees of regulations for the different categories;
- (vii) should confer rights and impose duties, including obligations of disclosure, upon different categories of companies;
- (viii) be restructured so as to remove or replace the inadequate and obsolete provisions;
- (ix) should incorporate a strong code of corporate governance.

3. A Working Group comprising of persons with knowledge of law, economics and company affairs was set up in August, 1996 pursuant to the 1996 Budget speech to rework a new draft of the law on Companies and make it available for public debate.

4. The Working Group had a series of meeting during which it interacted with, and received responses from, Reserve Bank of India, Securities and Exchange Board of India, banks and financial institutions, merchant bankers, capital market players, stock exchange officials, industry associations, professional bodies and others who significantly contribute to the corporate environment. The Group prepared a working draft of the Companies Bill and submitted the same on 2.5.1997 to the Government which was released for public debate. The suggestions and observations on the working draft were made known to Government through various workshops and seminars organised by chambers of commerce, industry associations, professional institutes, etc. Memoranda and detailed suggestions/representations were received by the Government from various organisations, Members of Parliament, professional bodies and other individual experts having extensive knowledge and wide experience of corporate affairs.

5. The main objective of re-enacting the Companies Act is to facilitate a healthy growth of the Indian corporate sector under a liberalised, fast changing and highly competitive environment. While redrafting the law, an endeavour has been made to adopt a balanced approach that recognises an international trend, i.e., flexibility and greater self regulation by companies subject to better disclosure, more efficient enforcement of law, and prompt and deterrent punishments to those who violate the law. The core object of the Companies Bill is to provide effective protection to the different participants, leaving management free to direct its energies to the pursuit of the

company's objectives.

6. The Bill has re-grouped the scattered provisions relating to specific subjects and deleted redundant provisions. The salient features of the present Bill which seeks to repeal and re-enact the Companies Act, 1956 are as under—

- (i) reducing the size of the present Companies Act, 1956, from 658 sections and fifteen Schedules to 458 sections and three Schedules;
- (ii) providing for appropriate rules and guidelines to ensure flexibility and clarity;
- (iii) providing three-fold classification of companies, that is—
  - (a) private companies, which are proposed to be largely self-governing but prohibited from inviting and accepting deposits from the public and not to be deemed as public companies;
  - (b) unlisted public companies, which will be subject to minimum Government regulations;
  - (c) listed public companies, which will be subject to greater regulation including stricter disclosure norms;
- (iv) permitting issue of shares with differential voting and dividend rights;
- (v) enabling companies to mobilise funds through new forms of securities, such as hybrids, derivatives, options, etc;
- (vi) permitting companies to buy-back their own shares subject to certain rules and safeguards;
- (vii) permitting issue of Indian Depository Receipts (IDRs) by foreign companies to enable them to tap the Indian capital market for setting up enterprises in India;
- (viii) permitting companies to make investments or loans to other bodies corporate without approval of the Government but with the approval of the shareholders;
- (ix) prescribing minimum paid up capital of one lakh rupees for private companies and five lakhs rupees for public limited companies;
- (x) giving option to companies for preparation of group accounts and conferring power upon the Central Government to make mandatory the preparation of such group accounts from a future date to be notified;
- (xi) limiting the age upto seventy five years for all directors in public companies but those persons already appointed as managing directors or whole-time directors or directors may complete their current tenure;
- (xii) simplifying depreciation rates of certain assets of a company;
- (xiii) providing that a public company may have a maximum of fifteen directors;
- (xiv) providing nomination facility to shareholders, debenture holders and deposit holders;
- (xv) establishing the Investor Education and Protection Fund for the protection and education of investors;
- (xvi) empowering the Central Government to appoint a Director General of Inspection and Investigation to strengthen inspection and investigation of companies;

(xvii) empowering the Central Government to prepare panels of chartered accountants, advocates, company secretaries or cost accountants eligible to be appointed as liquidators to facilitate expeditious winding up of companies;

(xviii) providing for time limit within which various steps of winding up are to be completed;

(xix) constituting the Company Law Tribunal in place of the existing Company Law Board and vesting the Tribunal with more functions and powers and providing it with wider jurisdiction;

(xx) providing for appointment of a Chief Accounts Officer in every listed company having a paid-up capital of three crore rupees or more, who shall be responsible for timely preparation and finalisation of the annual accounts of a company and be one of the signatories to the balance-sheet;

(xxi) permitting an auditor to conduct audit of twenty-five companies irrespective of their size as against the present limit of twenty companies and providing for stricter norms for audit and disclosures;

(xxii) empowering the Central Government to direct financial audit or cost audit or secretarial audit;

(xxiii) empowering the Central Government to appoint firms of professionals such as chartered accountants, cost accountants, company secretaries and advocates as "Licensed Registrars" who would discharge certain functions of the Registrar which may be entrusted by the Central Government. Licensed Registrar will provide Registrar's services in certain matters in addition to Registrars of Companies of the Central Government;

(xxiv) entrusting the administration and supervision (including powers to prosecute) of work relating to issue of securities and other related matters in case of listed public companies to the Securities and Exchange Board of India to avoid overlapping of functions;

(xxv) enhancing penalty and punishment for contravention of provisions so as to ensure better compliance of law.

7. The Bill includes provisions to remove existing lacunae in the Companies Act, 1956 and to streamline some of the existing provisions for better working and administration of the Companies Act. Certain incidental and consequential changes are also sought to be made.

8. In view of the extensive changes made in the Companies Act, 1956, it has been considered necessary to repeal and re-enact the said Act.

9. The Bill seeks to achieve the above objectives.

10. The Notes on clauses explain, in detail, the provisions of the Bill.

P. CHIDAMBARAM.

NEW DELHI;

THE 12TH AUGUST, 1997.

*Notes on Clauses*

*Clause 1* corresponds to section 1 of the Companies Act, 1956 (hereinafter referred to as the Act) with minor modifications.

*Clause 2* incorporates the definition of words and phrases used in the Act. By and large there are new changes in the definition of the words and phrases as given in section 2 of the existing Act. New words and phrases are proposed to be added namely, abridged prospectus, accounting standards, book building, Chartered Accountant, Chief Financial Officer, Depository, derivative, Director General, Employees stock option, Hybrid, Licensed registrar, Listed public company, notification, option in securities, Regional Director, Register, Securities, Share with differential rights, Unlisted public company. An efforts has been made to bring in all the definitions which are considered necessary under section 2 itself instead defining the words and phrases at several places as is done in the existing Act. For example, the words and expressions "officer who is in default", "relative", "member", "charge" and "Government company" as defined under various sections of the Act have been brought under clause 2. Securities and Exchange Board shall administer the provisions regarding prospectus, listing and other matters relating to issue of securities.

*Clause 3* corresponds to sections 3 and 43 of the Act. These clauses define "company", "existing company", "private company", and "public company" since the proposed legislation extend to the whole of India it has been provided that the companies incorporated under the Registration of Companies, Sikkim Act, 1961 will be existing companies within this clause.

*Clause 4* corresponds to section 4 of the Act defines "holding Company" and "Subsidiary Company".

*Clause 5* corresponds to section 5 of the Act and provides for meaning of "officers in default".

*Clause 6* corresponds to section 9 of the Act and provides that the provisions of the Act to override memorandum.

*Clause 7* corresponds to section 11 of the Act which puts restrictions in establishing certain partnership firms for undertaking banking and other business. There is no other change except that members of recognised professions can form firm consisting of "fifty persons" as against "twenty persons" in other cases.

*Clause 8* corresponds to section 12 of the Act prescribes mode of forming companies.

*Clause 9* corresponds to sections 13, 14 and 15 of the Act. By and large there is change in this clause the earlier requirement of having objects should be sub-divided into three categories has been done away with the only twin classification of the "main object" and "other objects" has been retained. Specimen forms of the Memorandum which form part of the Act in Table B, C, and D in Schedule I have been omitted and provisions of section 15 of the Act have been merged in sub-clause (4) of this clause.

*Clause 10* corresponds to section 17 of the Act provides for procedure for alteration of Memorandum of the company relating to its objects.

*Clause 11* corresponds to sections 18 and 19 of the Act and prescribes procedure with respect to registration of alteration of Memorandum.



*Clause 12* corresponds to sections 20, 21, 22 and 23 of the Act and provides that companies not to be registered with undesirable name, prescribes procedure for change of name, rectification of name and effect thereof.

*Clause 13* corresponds to section 25 of the Act and empowers Central Government to register associations having charitable objects as limited companies.

*Clause 14* corresponds to sections 26, 27, 28, 29 and 30 of the Act and provides for registration of Articles of Associations prescribing regulations with Memorandum in case of all companies with certain modifications.

*Clause 15* corresponds to section 31 of the Act and prescribes the manner in which articles of Association may be altered.

*Clause 16* corresponds to section 32 of the Act provides for registration of unlimited companies as limited, etc., with a new proviso empowering the Registrar to refuse registration after giving reasons for such refusal.

*Clause 17* corresponds to sections 33, 34, 35 and 36 of the Act and provides for manner in which a company is to be incorporated and filing of declaration with the registrar.

*Clause 18* corresponds to section 37 of the Act and prescribes provision as to companies limited by guarantee.

*Clause 19* corresponds to sections 38, 39 and 40 of the Act and provides for effect of alteration in Memorandum or Articles and copies to be given to members of the altered Memorandum and Articles.

*Clause 20* corresponds to section 42 of the Act and provides who can be a member of holding company with the modification that "where a subsidiary company continues to be a member of a holding Company under sub-clause (3) nothing in this clause shall prejudice its rights to be allotted bonus shares of such holding company".

*Clause 21* corresponds to section 45 of the Act and provides for liability of members for debts in certain cases.

*Clause 22* corresponds to sections 46, 47 and 48 of the Act and provides for contracts to be executed by company.

*Clause 23* corresponds to section 49 of the Act and provides that investment of a company to be held in its own name.

*Clause 24* corresponds to section 50 of the Act and provides for power of company to have official seal for use outside India.

*Clause 25* corresponds to sections 51 and 52 of the Act and provides for the manner in which document may be served on a company or an officer or on the Registrar.

*Clause 26* corresponds to section 53 of the Act and provides for the manner in which a document may be served on members by the company.

*Clause 27* corresponds to section 54 of the Act and provides for the manner in which documents of the company can be authenticated.

*Clause 28* corresponds to section 602 of the Act defines the meaning of 'certified', 'director', 'place of business' and 'secretary', 'prospectus' and 'Indian Depository Receipt', etc. for those companies incorporated outside India.

*Clause 29* corresponds to section 591 of the Act and provides for application of sections 28 to 46 for foreign companies.

*Clause 30* corresponds to section 592 of the Act and provides for procedure for delivery of documents by foreign companies to the Registrar.

*Clause 31* corresponds to section 593 of the Act and provides for delivery of altered documents to Registrar by foreign companies.

*Clause 32* corresponds to section 594 of the Act and provides for preparing and laying of accounts of foreign companies and delivering the same to Registrar of companies.

*Clause 33* corresponds to section 595 of the Act and prescribes obligations to state name of foreign company and country where incorporated.

*Clause 34* corresponds to section 596 of the Act and provides for service of documents on foreign company.

*Clause 35* corresponds to section 597 of the Act and relates to office where documents to be delivered.

*Clause 36* corresponds to section 598 of the Act and provides for penalties for non-compliance of the provisions of sections 30 to 35.

*Clause 37* corresponds to section 599 of the Act and relates to company's failure to comply with this part not to affect its liability under contract.

*Clause 38* corresponds to section 600 of the Act and relates to registration of charges, appointment of receiver and books of account.

*Clause 39* corresponds to section 601 of the Act and prescribes fees for registration of documents under this part by a foreign company.

*Clause 40* corresponds to section 603 of the Act and prescribe dating of prospectus and particulars to be contained therein by a foreign company having a place of business in India.

*Clause 41* corresponds to section 604 of the Act and provides for expert's consent and allotment of shares.

*Clause 42* corresponds to section 605 of the Act and relates to registration of prospectus issued by foreign companies and with the modification that Indian Depository Receipt cannot be issued unless a prospectus has been delivered for registration to the Registrar.

*Clause 43* empowers the Central Government to prescribe procedure for issue of Indian Depository Receipt by a Company incorporated outside India.

*Clause 44* corresponds to section 606 of the Act and prescribe penalty for contravention by a foreign company with regard to filing of prospectus and its registration.

*Clause 45* corresponds to section 607 of the Act and prescribe civil liability for mis-statements in prospectus offering for subscription shares in or debentures or in Indian Depository Receipts.

*Clause 46* corresponds to section 608 of the Act and relates to interpretation of provisions as to prospectus and Indian Depository Receipt.

*Clause 47* provides for application of Part III regarding prospectus, allotment, listing and other matters relating to issue of securities and administration of provisions relating to Public Limited Companies by Securities and Exchange Board of India.

*Clause 48* corresponds to section 56 and provides for matters and reports to be set out in prospectus with the modification that where any prospectus is published as a newspaper advertisement or in any other manner, it must be in the form of abridged prospectus.

*Clause 49* corresponds to sections 57, 58 and 59 of the Act and prescribes that statement of expert should be included in a prospectus only on certain conditions.

*Clause 50* corresponds to section 60 of the Act prescribes procedure for registration of prospectus with Registrar of Companies and delivery of the same to Registrar of Companies and the Securities and Exchange Board of India simultaneously. Where a company issues any foreign or other depository receipts in accordance with the rules made in this behalf, the details of the circular or prospectus issued outside India is also required to be filed alongwith the prospectus.

*Clause 51* — A new provision which defines of 'shelf prospectus'. The shelf prospectus will have a validity period of 365 days subject to updating on material facts, material litigation and changes in financial position between the previous offering and the next one which is presently proposed to be allowed to public financial institution, public sector banks and scheduled banks.

*Clause 52* provides for the concept of 'book building' and information memorandum. This is an international practice and refers to collecting orders from investment bankers and large investors based on an indicative price range. This is essentially a pre-issue exercise which will facilitate the issuers to get a better idea of demand and the final offer price. The directors of the company however, will not be permitted to resort to under writing on book building.

*Clause 53* corresponds to section 61 of the Act and provides that terms of contract mentioned in prospectus not to be varied.

*Clause 54* corresponds to section 62 of the Act and provides for civil liability for mis-statements in prospectus with modification that no body gives their consent to be named as an expert in a prospectus in a light manner.

*Clause 55* corresponds to section 63 of the Act and provides for criminal liability for mis-statements in prospectus.

*Clause 56* corresponds to section 64 of the Act and provides that a document containing offer of securities for sale to be deemed prospectus.

*Clause 57* corresponds to section 65 of the Act and provides for interpretation of provisions relating to prospectus.

*Clause 58* corresponds to section 67 of the Act and provides for construction of references to offering securities to the public, etc., with modification to decide the offer of any securities by a company including the right to restrain any offer or issue shall be vested in the company.

*Clause 59* — This clause provides for listed public company to comply with the provisions of the Depositories Act, 1996 before making initial public offer of any security for rupees ten crores or more.

*Clause 60* corresponds to section 68 of the Act and provides for penalty for fraudulently inducing persons to invest money.

*Clause 61* corresponds to section 68A of the Act and provides for impersonation of acquisition, etc., of securities with modification that making multiple applications to company in different names by using different combinations pertaining to name, etc., for acquiring or subscribing any securities is proposed to be made punishable.

*Clause 62* corresponds to section 69 of the Act prohibiting allotment of shares unless minimum subscription is received with modification in minimum amount payable on application which is proposed to be increased from earlier 5 per cent. to 25 per cent. and also that this section shall not apply to a public financial institution.

*Clause 63* corresponds to section 71 of the Act provides for effect of irregular allotment.

*Clause 64* corresponds to section 72 of the Act and provides for application for, and allotment of, securities.

*Clause 65* corresponds to sections 73 and 74 of the Act and provides that allotment of securities to be dealt in on stock exchange with the modification to provide that allotment shall be void only if the permission has not been granted by the Regional Stock Exchange with proviso is proposes that it refunds of application money which have remained unclaimed or unpaid for a period of seven years, they shall form part of Investor Protection Fund established under clause 414 of the Bill.

*Clause 66* corresponds to section 75 of the Act and provides for filing of return of allotment of securities with Registrar with minor modification regarding the requirement of writing the occupation of the allottee is not required to be mention in the return of allotment.

*Clause 67* corresponds to section 76 of the Act and prescribes power to pay certain commissions and prohibition of payment of all other commission, discounts, etc., with certain modifications.

*Clause 68* corresponds to section 77 of the Act and prescribe restrictions on purchase by company on its own securities, or loans by company for purchase, of its own securities or of its holding company.

*Clause 69* Power to permit companies to buy-back shares for extinguishing share capital.

*Clause 70* corresponds to section 78 of the Act and relates to application of premiums received on issue of securities with modification by adding sub-clause (e) to make a provision for buy-back of shares out of the securities premium account and the existing sub-section (3) has been deleted.

*Clause 71* corresponds to section 79 of the Act and prescribe power to issue securities at a discount and with modification that every prospectus relating to the issue of shares shall contain particulars of the discount allowed and also that the discount has not been written off at the date of the issue of the prospectus.

*Clause 72* corresponds to section 80 of the Act and relates to power to issue redeemable preference shares with modification that proviso to existing sub-section (4) is proposed to be deleted.

*Clause 73* corresponds to section 80A of the Act relates to redemption of certain preference shares with modification that reference to irredeemable preference shares is proposed to be omitted being redundant.

*Clause 74* corresponds to section 81 of the Act and prescribe further issue of capital with certain modification. The company has been permitted to increase its subscribed capital by causing the exercise of an option under the Employees Stock Option Scheme.

*Clause 75* corresponds to sections 82 and 83 of the Act and relates to nature of shares, etc., and provision for nomination with the modification that sub-clause (1) now provides that debentures of a company shall also be a movable property and further nomination facilities are also provided.

*Clause 76* corresponds to section 84 of the Act and relates to certificate of shares with modification that the provisions of this Act relating to issue of certificates of shares shall apply to derivatives, options and shares with differential voting rights also.

*Clause 77* corresponds to section 85 of the Act and provides for preference and equity share capital.

*Clause 78* corresponds to section 86 of the Act and defines kinds of share capital and provide for differential rights.

*Clause 79* corresponds to section 87 of the Act and provide for the voting rights of a member of the company on a poll.

*Clause 80* corresponds to section 90 of the Act and is a saving clause and with modification in the provision to allow companies to issue shares with differential rights.

*Clause 81* corresponds to sections 91, 92 and 93 of the Act and relates to calls on shares.

*Clause 82* corresponds to sections 94 and 95 of the Act and provide for alteration of share capital.

*Clause 83* corresponds to section 97 of the Act and prescribes notice of increase of share capital.

*Clause 84* corresponds to section 98 of the Act and prescribe power of unlimited company to provide for reserve share capital on re-registration.

*Clause 85* corresponds to section 99 of the Act and relates to reserve liability of limited company.

*Clause 86* corresponds to section 100 of the Act and prescribe a special resolution for reduction of share capital with modification empowering Tribunal instead of Court.

*Clause 87* corresponds to section 101 of the Act and prescribe application to Tribunal for confirming order.

*Clause 88* corresponds to section 102 of the Act and relates to order confirming reduction and powers of Tribunal on making such order.

*Clause 89* corresponds to section 103 of the Act and prescribe registration of order and minute of reduction with modification which empowers Tribunal instead Court.

*Clause 90* corresponds to section 104 of the Act and relates to liability of members in respect of reduced shares.

*Clause 91* corresponds to section 105 of the Act and provides for liability of company to create Securities and debenture redemption reserve.

*Clause 92* corresponds to section 106 of the Act and relates to variation rights of holders of special classes of shares.

*Clause 93* corresponds to section 107 of the Act and provides for rights of dissentient share-holders and with the proposed modification which empowers Tribunal instead of Court to exercise powers under this clause.

*Clause 94* corresponds to section 108 of the Act and provides that transfer of securities not to be registered except on production of instrument of transfer. The clause has proposed radical changes by doing away with the requirement with respect to endorsement and validity of a share transfer instrument. The share transfer instrument will continue to be remain valid without any limitation and also that no transmission of shares shall be refused except by private company on the ground that number of members will increase beyond fifty.

*Clause 95* corresponds to section 109 of the Act and provides for transfer by legal application for transfer by legal representative.

*Clause 96* corresponds to section 110 of the Act and provides for lodging of application for transfer of the shares or other interest of a member in a company.

*Clause 97* corresponds to section 111 of the Act and prescribe power to refuse registration and appeal against refusal with the proposed modification that in the case of private company the transfer of shares shall be approved by all the shareholders at the meeting of the company. The concept of deemed public company is proposed to be deleted.

*Clause 98* corresponds to section 111A of the Act and relates to rectification of Register of members.

*Clause 99* corresponds to section 112 of the Act and provides regarding certificate of transfer instrument of shares or debentures by a company.

*Clause 100* corresponds to section 113 of the Act and prescribes limitation of time for issue of certificate with modification that the provisions of this clause relating to the issue of shares or debentures shall apply to the issue of derivative options and shares with differential voting rights.

*Clause 101* corresponds to section 116 of the Act and prescribe penalty for impersonation of share-holder.

*Clause 102* corresponds to section 117 of the Act and prescribe debentures with voting rights not to be issued hereafter.

*Clause 103* This is new clause which prescribe debenture trust deed and right to obtain copies and to inspect it.

*Clause 104* corresponds to section 119 of the Act and prescribe appointment of Debenture Trustees and duties of Debenture Trustees.

*Clause 105* relates to liability of company to create security and debenture redemption reserve. This is new clause which prescribe the company to create a debenture redemption reserve out of its profits every year until such debentures are redeemed.

*Clause 106* corresponds to section 118 of the Act and prescribe right to obtain copies of and inspect trust deed by holder of debentures or any member of the company and with modification that sub-section (3) of the Act has been proposed to be omitted.

*Clause 107* analogous to section 119 of the Act and prescribe liability of trustees for debenture holders.

*Clause 108* corresponds to section 120 of the Act and provides for issue of perpetual debentures.

*Clause 109* corresponds to section 121 of the Act and empowers a company to re-issue redeemed debentures in certain cases.

*Clause 110* corresponds to section 122 of the Act providing for specific performance of contract to subscribe for debentures.

*Clause 111* corresponds to section 123 of the Act providing for payment of certain debts out of assets under certain circumstances.

*Clause 112* relates to acceptance of deposits by companies and with proposed modifications, namely (a) no private company and deemed public company can invite or accept deposits from persons other than its members, directors or their friends and relatives; (b) nomination facilities provided; and (c) prohibits companies which have defaulted in repayment of deposits to declare or pay dividend make any loan or give any guarantee or to make any investment in securities till the default is made good corresponds to section 58A.

*Clause 113* corresponds to sections 125 and 126 of the Act and prescribe certain charges to be void against liquidator or creditors unless registered and with modification that the Registrar of Companies has been empowered to grant extension for sixty days instead of thirty days.

*Clause 114* corresponds to section 127 of the Act and relates to registration of charges on properties acquired subject to charge. The time for registration has been made sixty days instead of earlier thirty days.

*Clause 115* corresponds to sections 128 and 129 of the Act and prescribe particulars to be filed in case of series of debentures and commission, etc., on debentures.

*Clause 116* corresponds to sections 130, 131 and 132 of the Act and prescribe register of charges to be kept by Registrar.

*Clause 117* corresponds to section 133 of the Act and prescribe endorsement of registration on debentures.

*Clause 118* corresponds to sections 134 and 135 of the Act and prescribe duty of company as regards registration, modification of the charge and right of interested party.

*Clause 119* corresponds to section 137 of the Act and prescribe entry in register of charges of appointment of receiver or manager.

*Clause 120* corresponds to section 138 of the Act and prescribe company to report satisfaction of charges to the registrar and procedure thereafter.

*Clause 121* corresponds to sections 139 and 140 of the Act and prescribe power of Registrar to make entries of satisfaction and copy of Memorandum of satisfaction to be furnished by the Registrar.

*Clause 122* corresponds to section 141 of the Act and prescribe rectification by Tribunal of register of charges.

*Clause 123* corresponds to section 142 of the Act and prescribe penalties for default in filing charges with the Registrar of Companies.

*Clause 124* is analogous to Sections 136, 143 and 144 of the Act and provide for Register of Charges and its inspection

*Clause 125* corresponds to section 146 of the Act and relates to registered office of the company.

*Clause 126* corresponds to section 147 of the Act and prescribe publication of name by the company.

*Clause 127* corresponds to section 148 of the Act and prescribe publication of authorised as well as subscribed and paid up capital.

*Clause 128* corresponds to sections 150, 151, 152, 152A and 154 of the Act and prescribe register of members and debenture holders to be maintained by the company with the modification to keep record in computer floppies and diskettes. The Register and index under Depositories deemed as Register of Members.

*Clause 129* corresponds to section 153 of the Act and prohibits trusts not to be entered in Register of Members.

*Clause 130* corresponds to sections 159, 160, 161 and 162 of the Act and relates to annual return to be made by a company with the modification that particulars of the Chief Accounts Officer have to be included,

*Clause 131* relates to commencement of business and corresponds to section 149 of the Act and dispenses with certificate of commencement of business.

*Clause 132* corresponds to sections 163 and 164 of the Act relating to place of keeping and inspection of Register and returns.

*Clause 133* corresponds to sections 166, 167 and 168 of the Act and relates to calling Annual General Meeting and penalty for default to do so.

*Clause 134* corresponds to section 169 of the Act and relates to calling of an extraordinary general meeting on requisition of members.



*Clause 135* corresponds to section 170 of the Act and specifies procedure with respect to General Meeting, etc.

*Clause 136* corresponds to section 171 of the Act and prescribe length of notice for calling meeting.

*Clause 137* corresponds to section 172 of the Act and provides for contents and manner of service of notice and persons on whom it is to be served.

*Clause 138* corresponds to section 173 of the Act and it relates to the explanatory statement to be annexed to a notice convening a general meeting, etc.

*Clause 139* corresponds to section 174 of the Act fixing quorum for meetings.

*Clause 140* corresponds to section 175 of the Act and provides for election of Chairman of a meeting.

*Clause 141* corresponds to section 176 of the Act and provides for the appointment of proxies by a member.

*Clause 142* corresponds to sections 177, 178, 179, 180, 183, 184 and 185 of the Act and relates to the manner in which voting is to be done in a General Meeting and regarding power of Chairman to be declare results in case of voting by show of hands.

*Clause 143* corresponds to sections 181 and 182 of the Act and provides for restriction of voting rights of members.

*Clause 144* corresponds to section 186 of the Act and provides for power of Tribunal to call.

*Clause 145* corresponds to sections 187 and 187A of the Act and provides for representations at meetings of Members and creditors.

*Clause 146* corresponds to section 188 of the Act and provides for circulation of members' resolutions.

*Clause 147* corresponds to section 189 of the Act and deals with ordinary resolution and special resolution.

*Clause 148* corresponds to section 190 of the Act and provide for resolutions requiring special notice

*Clause 149* corresponds to section 191 of the Act regarding resolutions passed at adjourned meetings.

*Clause 150* corresponds to section 192 of the Act regarding registration of certain resolutions and agreements.

*Clause 151* is a new clause and provides for procedure of postal ballot.

*Clause 152* corresponds to sections 193, 194 and 195 of the Act and provide for maintenance of minutes books including loose leaf system.

*Clause 153* corresponds to sections 196 and 197 of the Act regarding inspection of minute book of general meeting.

*Clause 154* corresponds to section 197A of the Act which prohibits simultaneous appointment of different categories of managerial personnel at the same time.

*Clause 155* corresponds to section 198 of the Act and provides for payment of overall maximum managerial remuneration.

*Clause 156* corresponds to section 200 of the Act which prescribe prohibition of tax free payments.

*Clause 157* corresponds to section 201 of the Act regarding avoidance of provisions relieving liability of officers and auditors of company.

*Clause 158* corresponds to sections 202 and 203 of the Act regarding undischarged insolvent being not permitted to manage companies.

*Clause 159* corresponds to section 204 of the Act regarding restriction on appointment of firm or body corporate to office or place of profit under a company for a term exceeding five years at a time.

*Clause 160* corresponds to section 205 of the Act which provides that the dividend be paid only out of profits.

*Clause 161* corresponds to section 205A provides for mandatory transfer of unpaid dividend to a Special Dividend Account by a company and penalty for failure to do so.

*Clause 162* corresponds to section 206A of the Act regarding right to dividend, right shares and bonus shares which companies are required to hold in abeyance pending registration of transfer of shares.

*Clause 163* corresponds to section 209 of the Act regarding books of account to be kept by the company by a Chief Accounts Officer.

*Clause 164* corresponds to section 209A of the Act regarding inspection of books of account, by Director General or Regional Director or Registrar or authorised officer etc., of the companies.

*Clause 165* corresponds to section 210 of the Act regarding annual accounts and balance-sheet to be laid at every annual general meeting of the company.

*Clause 166* corresponds to section 211 of the Act prescribing form and content of balance-sheet and profit and loss account and compliance of Accounting Standards.

*Clause 167* corresponds to section 212 of the Act regarding annual accounts of subsidiary companies.

*Clause 168* provides for a company to prepare consolidated accounts and empowers Government to make mandatory the preparation of such accounts in future.

*Clause 169* corresponds to section 213 of the Act and relates to financial year of holding company and subsidiary company.

*Clause 170* corresponds to section 214 of the Act relating to rights of holding company's representatives and member.

*Clause 171* corresponds to section 215 of the Act regarding authentication of balance-sheet and profit and loss account.

*Clause 172* which requires to listed public companies having a paid-up share capital of rupees three crores or more to have Chief Accounts Officer (CAO) and prescribes his duties.

*Clause 173* corresponds to section 217 of the Act regarding matters to be stated in the report of directors including business segment wise working results.

*Clause 174* corresponds to section 218 of the Act regarding penalty for improper issue, circulation or publication of balance-sheet or profit and loss account.

*Clause 175* corresponds to section 219 of the Act regarding rights of members to the copies of balance-sheet and auditor's report.

*Clause 176* corresponds to section 220 of the Act regarding filing of balance-sheet of a company.

*Clause 177* corresponds to section 221 of the Act regarding duty of officers to make disclosure of payments.

*Clause 178* corresponds to section 222 of the Act regarding construction of references to documents annexed to accounts.

*Clause 179* corresponds to section 223 of the Act regarding certain companies to publish statement in Table E in Schedule I.

*Clause 180* corresponds to section 224 of the Act regarding appointment and remuneration of auditor that the Auditor can audit 25 companies.

*Clause 181* corresponds to section 225 of the Act provides for appointment and removal of auditors.

*Clause 182* corresponds to section 226 of the Act regarding qualifications and disqualifications of auditors.

*Clause 183* corresponding to section 227 prescribes forms and content of auditors' Report.

*Clause 184* corresponds to section 228 of the Act which deals with audit of accounts of branch office of company.

*Clause 185* corresponds to section 229 of the Act regarding signature of the auditor's report.

*Clause 186* corresponds to sections 230 and 231 of the Act and provides for reading and inspection of audit reports and auditors' right to attend annual general meeting.

*Clause 187* corresponds to section 232 of the Act provides for penalty for non-compliance of audit provisions.

*Clause 188* corresponds to section 233 of the Act which provides penalty for non-compliance of sections 183 and 185.

*Clause 189* corresponds to section 233B of the Act and provide for Cost Audit in certain cases.

*Clause 190* corresponds to section 234 of the Act which confers power on the Registrar to call for information and explanation.

*Clause 191* corresponds to section 234A of the Act regarding seizure of documents by Registrar.

*Clause 192* corresponds to sections 235 and 236 of the Act and provides for investigation of affairs of a company.

*Clause 193* corresponds to sections 237 and 238 of the Act and prohibits firms, bodies of associations from being appointed as inspector.

*Clause 194* corresponds to section 239 of the Act regarding power of inspectors to carry investigation into affairs of related companies.

*Clause 195* corresponds to section 240 of the Act regarding production of documents and evidence before inspector by officers and other employees of company.

*Clause 196* corresponds to section 240A of the Act regarding seizure of documents by inspector.

*Clause 197* corresponds to section 241 of the Act and relates to inspector's report.

*Clause 198* corresponds to section 242 of the Act and relates to prosecution for offences by Central Government in respect of offences reported by the inspector.

*Clause 199* corresponds to section 243 of the Act relating to application for winding up of companies on an order under section 397 or 398 of the Act.

*Clause 200* corresponds to section 244 of the Act regarding proceedings for recovery of damages or property.

*Clause 201* corresponds to section 245 of the Act regarding expenses of investigation and recovery procedure.

*Clause 202* corresponds to section 246 of the Act which provides that report of inspector shall be admissible in evidence.

*Clause 203* corresponds to section 247 of the Act empowering the Central Government to appoint an Inspector for the purpose of investigation of ownership of a company.

*Clause 204* corresponds to section 248 of the Act and empowers the Central Government to gather information regarding persons having an interest in the company.

*Clause 205* corresponds to section 250 of the Act enabling the Tribunal to impose restriction upon issue of shares and debentures and prohibition of transfer of shares/debentures in certain cases.

*Clause 206* is on the lines of section 250A of the Act and provides for continuance of investigation proceedings in cases of voluntary winding up.

*Clause 207* corresponds to section 251 of the Act regarding confidentiality of correspondence with legal advisers and bankers during investigation.

*Clause 208* corresponds to section 252 of the Act which provides for the minimum number of directors of a public and private limited companies.

*Clause 209* corresponds to section 255 of the Act and relates to appointment of directors and proportion of those who are liable to retire by rotation.

*Clause 210* corresponds to section 256 of the Act and provides for the manner in which directors retiring by rotation will be ascertained and filling of vacancies.

*Clause 211* corresponds to section 257 of the Act and provides for the right of a member other than a retiring director to stand for directorship.

*Clause 212* corresponds to section 260 of the Act and provides for appointment of additional directors.

*Clause 213* corresponds to section 262 of the Act and provides for filling of casual vacancies among directors.

*Clause 214* corresponds to section 263 of the Act which provides for appointment of directors to be voted on individually.

*Clause 215* corresponds to section 263A of the Act which exempts companies not carrying on business for profit from compliance of certain provisions.

*Clause 216* corresponds to section 264 of the Act and provides for consent to act as a director to be filed with the Registrar.

*Clause 217* corresponds to section 265 of the Act which gives option to a company to adopt a system of proportional representation for appointment of director.

*Clause 218* corresponds to section 266 of the Act regarding restriction on appointment or advertisement of a director without obtaining his consent.

*Clause 219* corresponds to section 267 of the Act and provides that certain persons shall not be appointed as managing directors.

*Clause 220* corresponds to section 269 of the Act which provides for appointment of managing or whole-time director or manager by Central Government.

*Clause 221* corresponds to section 274 of the Act regarding disqualification of directors under specified circumstances.

*Clause 222* corresponds to sections 275, 276, 277 and 279 of the Act and prescribes that no person can be director in more than fifteen companies.

*Clause 223* corresponds to section 278 of the Act and excludes certain directorships for the purposes of limits on the number of directorship.

*Clause 224* provides for restriction of age of seventy-five years for a person to be appointed as Managing Director, Whole-time Director or a Director.

*Clause 225* corresponds to section 283 of the Act which provides for grounds for vacation of office by directors.

*Clause 226* corresponds to section 284 of the Act which specifies the procedure for removal of a director.

*Clause 227* corresponds to sections 285 to 290 of the Act and provides for meetings of Board, notice, quorum, etc., with minor modifications.

*Clause 228* corresponds to section 291 of the Act regarding general powers of the Board.

*Clause 229* corresponds to section 292 of the Act which prescribes certain powers to be exercised by the Board only at the meeting.

*Clause 230* requires every public company having a paid-up capital of not less than 5 crores of rupees to constitute a committee of the Board of directors known as "audit committee".

*Clause 231* corresponds to section 293 of Act and relates to restrictions on Board's power and matters requiring consent of company in general meeting.

*Clause 232* corresponds to sections 294, 294A and 294AA of the Act and deals with the appointment of sole selling agents.

*Clause 233* corresponds to section 295 of the Act and relates to loans to directors with the consent of the company by special resolution only. The provision of approval of Central Government has been dropped.

*Clause 234* corresponds to section 297 of the Act regarding Board's sanction for certain contracts in which directors are interested.

*Clause 235* corresponds to section 299 of the Act and prescribes the manner in which the interest of a director can be disclosed.

*Clause 236* corresponds to section 300 of the Act which prohibits participation of interested directors in a board meeting considering such contracts/arrangements.

*Clause 237* corresponds to section 301 of the Act and provides the manner and period in which entries in the Register of Contracts in which directors are interested to be entered.

*Clause 238* corresponds to sections 303 and 304 of the Act which provides the manner in which the register of directors, etc., with addition of Chief Accounts Officer and the inspection thereof by any member or any person.

*Clause 239* corresponds to section 305 of the Act and provides for disclosure of director interest in other companies within the specified period.

*Clause 240* corresponds to section 306 of the Act and provides for maintaining Register of particulars of directors, etc.

*Clause 241* corresponds to sections 307 and 308 of the Act and provides for maintenance of register of directors share holding.

*Clause 242* corresponds to section 309 of the Act relating to remuneration of directors.

*Clause 243* corresponds to section 313 of the Act and provides for manner and terms of appointment and terms of appointment of alternate directors.

*Clause 244* corresponds to section 314 of the Act relating to directors and their relatives holding office or place of profit.

*Clause 245* corresponds to section 316 of the Act which prescribes number of companies of which one may be appointed managing director.

*Clause 246* corresponds to section 317 of the Act and prohibits a managing or whole-time director's appointment for more than five years at a time.

*Clause 247* corresponds to section 318 of the Act regarding prohibition of payment of compensation to Director, etc., for loss of office, etc., or on retirement.

*Clause 248* corresponds to section 319 of the Act regarding payment of compensation to Director, etc., for loss of office, etc., in connection with transfer of undertaking or property.

*Clause 249* corresponds to section 320 of the Act regarding payment to directors for loss of office in connection with transfer of shares.

*Clause 250* corresponds to section 321 of the Act which provides supplementary provisions.

*Clause 251* corresponds to sections 322 and 323 of the Act relating to directors, etc., with unlimited liability in a limited company.

*Clause 252* corresponds to section 349 of the Act regarding determination of net profits for the purposes of managerial remuneration.

*Clause 253* corresponds to section 350 of the Act regarding ascertainment of depreciation.

*Clause 254* corresponds to sections 370 to 374 of the Act relating to regulation of intercorporate loans, and intercorporate investments. The Central Government's approval has been dispensed with.

*Clause 255* corresponds to section 376 of the Act and provides for condition prohibiting reconstruction or amalgamation of company.

*Clause 256* corresponds to section 383A of the Act and provides for appointment of whole-time company secretaries. It also prescribes for secretarial compliance certificate.

*Clause 257* corresponds to sections 384, 385, 386, 387, 388 and 388A of the Act regarding number of companies in which a person may be appointed Manager and his remuneration.

*Clause 258* corresponds to section 388B of the Act which provides for reference to Tribunal regarding cases against managerial personnel by the Central Government.

*Clause 259* corresponds to section 388C of the Act regarding interim order by Tribunal.

*Clause 260* corresponds to section 388D of the Act regarding decision of Tribunal.

*Clause 261* corresponds to section 388E of the Act which empowers Central Government to remove managerial personnel on the basis of Tribunal decisions.

*Clause 262* corresponds to section 390 of the Act and defines 'compromise' and 'arrangement'.

*Clause 263* corresponds to section 391 of the Act regarding compromise or arrangements with creditors or members by a company with the orders of the High Court.

*Clause 264* empowers the Court to obtain expert opinion in various fields.

*Clause 265* corresponds to section 392 of the Act wherein power has been given to High Court to enforce compromises and arrangements.

*Clause 266* corresponds to section 393 of the Act wherein the manner and contents of the notice to be given to creditors and members is specified.

*Clause 267* corresponds to sections 394 and 394A of the Act and certain provisions for facilitating reconstruction and amalgamation of companies.

*Clause 268* corresponds to section 395 of the Act and provides for acquiring share of dissenting shareholders who do not consent to scheme or contract approved by majority.

*Clause 269* provides procedure for compulsory buy out of minority shares.

*Clause 270* corresponds to section 396 of the Act and gives power to Central Government to provide for amalgamation of companies in public interest.

*Clause 271* corresponds to section 396A of the Act and provides for period of preservation of books and papers of amalgamated company.

*Clause 272* corresponds to sections 397 to 403, 405 and 406 of the Act and provides for making application to Tribunal for relief in case of oppression and mismanagement.

*Clause 273* corresponds to section 404 of the Act and provides for consequences of alteration of memorandum and articles of a company where the Tribunal passes an order on the application seeking relief for oppression and mismanagement.

*Clause 274* corresponds to section 407 of the Act and provides for consequences of termination or modification of certain agreements.

*Clause 275* corresponds to section 408 of the Act empowering Central Government to appoint nominee director under certain circumstances.

*Clause 276* corresponds to section 409 of the Act and empowering Tribunal to prevent change in the constitution of Board of directors which change is likely to affect company prejudicially.

*Clause 277* corresponds to section 416 of the Act and provides for the manner in which the contracts entered into by an agent of the company where the company is an undisclosed principal.

*Clause 278* corresponds to section 417 of the Act and provides that employees' securities to be deposited in Post Office savings bank or Scheduled Bank.

*Clause 279* corresponds to section 418 of the Act and provides for depositing of provident fund of the employees with Post Office, Scheduled Bank or to be invested in securities as referred in this clause.

*Clause 280* corresponds to section 419 of the Act, relates to right of an employee to see bank's receipt for monies or securities.

*Clause 281* corresponds to section 420 of the Act and relates to penalty for contravention under clauses 279 and 280.



*Clause 282* corresponds to section 425 of the Act and relates to the modes of winding up with the proposed modification that the provision for winding up under the supervision of Court, has been omitted.

*Clause 283* corresponds to section 428 of the Act and it defines the term 'contributory'.

*Clause 284* corresponds to section 426 of the Act and relates to liability as 'contributories' being past and present members.

*Clause 285* corresponds to section 427 of the Act and relates to obligations of directors and managers whose liability is unlimited.

*Clause 286* corresponds to section 430 of the Act and relates to liability of a contributory in case of a death of member.

*Clause 287* corresponds to section 431 of the Act regarding contributories in case of insolvency of member.

*Clause 288* corresponds to section 432 of the Act which deals with the position of contributories in case of winding up of a body corporate which is a member.

*Clause 289* is on the lines of section 433 of the Act regarding circumstances in which company may be wound up by the Court.

*Clause 290* corresponds to section 434 of the Act regarding company deemed to be unable to pay its debts.

*Clause 291* is on the lines of section 439 of the Act relating to provisions as to persons who can petition for winding up.

*Clause 292* corresponds to section 440 of the Act and relates to right to present application for winding up petition where company is being wound up voluntarily.

*Clause 293* corresponds to section 437 of the Act regarding power of High Court to transfer winding up proceedings from District Court.

*Clause 294* corresponds to section 441 of the Act regarding the commencement of winding up.

*Clause 295* corresponds to section 443 of the Act regarding powers of the Court on hearing petition.

*Clause 296* corresponds to section 442 of the Act empowering the Court to stay or restrain proceedings against company.

*Clause 297* corresponds to section 448 of the Act regarding appointment of Company Liquidator. It is proposed to empower Central Government to draw a panel of professional liquidators, e.g., Chartered Accountants, Advocates and other professionals having adequate experience as may be prescribed and High Courts may appoint such professionals as Official Liquidators.

*Clause 298* corresponds to section 449 of the Act and provides that company liquidator to be liquidator on a winding up order.

*Clause 299* corresponds to section 450 of the Act deals with appointment of Provisional Liquidator with the proposed modification by which 'issuing of notice by the court to the company before appointing a Provisional Liquidator' is deleted.

*Clause 300* corresponds to section 451 of the Act and deals with general provisions as to liquidators.

*Clause 301* corresponds to section 453 of the Act deals with prohibition of appointment of receiver in respect of assets which are in the hands of the liquidator.

*Clause 302* corresponds to section 457 and deals with powers of Company Liquidator.

*Clause 303* corresponds to section 458A deals with exclusion of certain time in computing periods of limitation.

*Clause 304* corresponds to section 459 of the Act and provides for legal assistance to Liquidator.

*Clause 305* corresponds to section 463 of the Act and deals with provisions relating to Liquidators who are officers of Central Government controlled by Central Government.

*Clause 306* — This is a provision empowering the court to exercise powers on liquidators who are not officers of Central Government.

*Clause 307* — A clause which provides for form and content of winding up order.

*Clause 308* — A provision which enables Company Liquidator to issue advertisement in newspapers regarding winding up order that has been passed on the company and to invite creditors to submit their proof of claims within the stipulated time.

*Clause 309* — A provision making the Company Liquidator to submit a report to the Court on the value of the various assets and of claims due to the company and a provisional financial statement of the company and the opinion of the Liquidator as to whether any fraud has been committed by any person during promotion of the company or in course of business.

*Clause 310* corresponds to section 461 of the Act which provides for books to be kept by Company Liquidator and audit of Company Liquidator's accounts.

*Clause 311* — A provision, which prescribes provision for conducting a sealed-bid-auction for the sale of assets of the company.

*Clause 312* — This is a provision empowering the Court to confer appropriate ownership rights upon completion of sale of asset and that transfer of ownership rights to new owner of asset which has been sold in winding up shall not attract stamp duty under Indian Stamp Act, 1899.

*Clause 313* corresponds to section 466 of the Act which provides for power of Court to stay winding up.

*Clause 314* corresponds to section 467 of the Act which provides for settlement of list of contributories and application of assets. This clause has been modified to the extent that the power of settlement of the list of contributories is vested upon Liquidator instead of the Court for filing an appeal to the Court within the prescribed period.

*Clause 315* corresponds to section 468 of the Act which provides for delivery of property to Liquidator.

*Clause 316* corresponds to section 469 of the Act and deals with payment of debts due by contributory and extent of set off.

*Clause 317* corresponds to section 470 of the Act which prescribes power of Court to make calls.

*Clause 318* corresponds to section 471 of the Act which provides for payment into bank of money due to company in winding up.

*Clause 319* corresponds to section 475 of the Act provides for adjustment of rights of contributories.

*Clause 320* corresponds to section 476 of the Act provides for power of Court to make an order for the cost, charges and expenses incurred in the winding up in such order of priority.

*Clause 321* corresponds to section 477 of the Act provides for power of Court to summon person suspected of having property of company, etc.

*Clause 322* corresponds to section 478 of the Act and prescribed exercising of power by Court to order public examination of promoters, directors, etc.

*Clause 323* corresponds to section 479 of the Act regarding certain powers to be exercised by the Court for arresting absconding contributory.

*Clause 324* corresponds to section 480 of the Act provides for saving of existing powers of Court.

*Clause 325* corresponds to section 481 of the Act provides for dissolution of company.

*Clause 326* corresponds to section 482 of the Act, provides for that any order made by Court in the course of winding up of a company shall be enforceable by other Courts.

*Clause 327* corresponds to section 483 of the Act provides for appeals from orders, and is modified to the extent that the appeals from any order made or decision given by the Court shall lie to the Division Bench of the same Court.

*Clause 328* corresponds to section 484 of the Act provides for circumstances in which company may be wound up voluntarily.

*Clause 329* corresponds to section 485 of the Act provides for publication of resolution passed for voluntary winding up.

*Clause 330* corresponds to sections 486 and 487 of the Act explains when a voluntary winding up is to commence.

*Clause 331* corresponds to section 488 of the Act to be detected provide for declaration of solvency in case of proposal to wind up voluntarily.

*Clause 332* corresponds to sections 490 and 492 of the Act and provides for power to appoint and fix the remuneration of Liquidator.

*Clause 333* corresponds to section 491 of the Act and provides that Board's power to cease on appointment of Liquidator.

*Clause 334* corresponds to section 493 of the Act and provides that notice of appointment of liquidator to be given to Registrar.

*Clause 335* corresponds to section 494 of the Act and provides for power of liquidator to accept shares, etc., as consideration for sale of property of company.

*Clause 336* corresponds to section 495 of the Act and provides for duty of liquidator to call creditors' meeting in case of insolvency.

*Clause 337* corresponds to section 496 of the Act provides for duty of liquidator to call general meeting at the end of each year.

*Clause 338* corresponds to section 497 of the Act and provides for call of final meeting and dissolution proposing procedural modification.

*Clause 339* corresponds to section 498 of the Act and provides for alternative provisions regarding annual and final meetings in case of insolvency.

*Clause 340* corresponds to section 500 of the Act relating to meeting of creditors.

*Clause 341* corresponds to section 501 and provides for notice of resolutions passed by creditors meeting to be filed with the Registrar.

*Clause 342* corresponds to section 502 of the Act and provides for appointment of liquidator in case of voluntary liquidator.

*Clause 343* corresponds to section 504 of the Act and provides for fixing of liquidator's remuneration by the creditors.

*Clause 344* corresponds to section 505 regarding cessation of powers of Board of Directors on appointment of a liquidator in case of creditors' voluntary winding up.

*Clause 345* corresponds to section 507 and provides that the provisions relating to power of liquidator in case of members voluntary liquidation shall apply in the case of creditors voluntary winding.

*Clause 346* corresponds to section 508 provides for calling of meetings of company and creditors by the liquidator at the end of each year.

*Clause 347* corresponds to section 509 of the Act and provides for calling of final meeting and dissolution with the modification that the requirement of sending copy of accounts to the liquidator has been dispensed with.

*Clause 348* corresponds to section 512 of the Act provides for powers and duties of liquidator in voluntary winding up.

*Clause 349* corresponds to section 514 of the Act prohibits appointment of liquidator by resorting to corrupt practices.

*Clause 350* corresponds to section 515 of the Act and provides for empowering the Tribunal to appoint and remove Liquidator in voluntary winding up.

*Clause 351* corresponds to section 516 of the Act which requires that liquidator should notify his appointment to the Registrar within a period of 20 days instead of 30 days.

*Clause 352* corresponds to section 517 of the Act provides for the circumstances when the arrangement will be binding on the company and the creditors.

*Clause 353* corresponds to section 518 of the Act provides for empowering a liquidator or a contributory or a creditor to apply to Court or the Tribunal and seek necessary directions.

*Clause 354* corresponds to section 519 of the Act which empowers the Liquidator to file an application before the Tribunal for public examination of promoters and directors.

*Clause 355* corresponds to section 520 of the Act provides for meeting cost of voluntary winding up.

*Clause 356* corresponds to section 528 of the Act and provides that the debts of all description to be admitted to proof.

*Clause 357* corresponds to section 529 of the Act and provides for application of insolvency rules in winding up of insolvent companies.

*Clause 358* corresponds to section 529A of the Act and provides for overriding preferential payments.

*Clause 359* corresponds to section 530 of the Act and provides regarding preferential payments and sub-section (9) of the existing section of the Act is being deleted as it is considered redundant.

*Clause 360* corresponds to sections 531 and 533 of the Act provides regarding fraudulent preference given in any transaction by transfer of property movable or immovable.

*Clause 361* corresponds to section 531A of the Act and provides for avoidance of voluntary transfer.

*Clause 362* corresponds to section 534 of the Act and provides for effect of floating charge on passing the winding up order.

*Clause 363* corresponds to section 535 of the Act provides for procedure for disclaimer of onerous property in case of a company which is being wound up.

*Clause 364* corresponds to section 536 of the Act provides for avoidance transfers, etc., after commencement of winding up.

*Clause 365* corresponds to section 537 of the Act and provides for avoidance of certain attachments, executions, etc., in winding up by Court.

*Clause 366* corresponds to section 538 of the Act provides for offences by officers of company in liquidation.

*Clause 367* corresponds to section 539 of the Act provides for penalty for falsification of books.

Clause 368 corresponds to section 540 of the Act provides for penalties for frauds by officers.

Clause 369 corresponds to section 541 of the Act provides for liability where proper accounts are not kept.

Clause 370 corresponds to section 542 of the Act provides for liability for fraudulent conduct of business.

Clause 371 corresponds to section 543 of the Act provides for powers of Court to assess damages against delinquent directors, etc. A new sub-clause (1) (c) has been added to assess the damages against delinquent directors, etc., and make them accountable if they have been guilty of gross negligence and reckless trading.

Clause 372 corresponds to section 545 of the Act provides for prosecution delinquent officers and members of the company with the proposed modification by which liquidator can prosecute the officer of the company in the Tribunal, and provisions regarding making reference to the ROC is deleted.

Clause 373 corresponds to section 546 of the Act provides for certain powers to be exercised by the Liquidator subject to sanction of the company or Court.

Clause 374 corresponds to section 547 of the Act and provides for notification of a company in liquidation.

Clause 375 corresponds to section 548 of the Act provides for that all books and papers of the company shall be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

Clause 376 corresponds to section 549 of the Act provides for disposal of books and papers of the company when the affairs of the company have been completely wound up.

Clause 377 corresponds to section 550 of the Act provides for information as to pending liquidations.

Clause 378 corresponds to sections 552 and 553 of the Act provides for liquidator to make payments in bank.

Clause 379 corresponds to section 555 of the Act provides for unpaid dividends and undistributed assets to be paid into the company's liquidation account.

Clause 380 corresponds to section 556 of the Act provides for enforcement of duty of liquidator to make returns, etc.

Clause 381 corresponds to section 558 of the Act provides for Court or persons before whom affidavit may be sworn.

Clause 382 corresponds to section 559 of the Act provides for powers of Court to declare dissolution of company as void.

Clause 383 corresponds to section 560 of the Act provides for power of Registrar to strike defunct company from the register.

Clause 384 corresponds to section 561 of the Act provides for application of Act to companies formed and registered under previous Companies Laws.

*Clause 385* corresponds to section 565 of the Act provides for companies capable of being registered.

*Clause 386* corresponds to section 566 of the Act defines joint stock company.

*Clause 387* corresponds to section 567 of the Act and provides for requirements for registration of joint stock companies.

*Clause 388* corresponds to section 568 of the Act provides for requirements for registration of companies which are not joint stock companies.

*Clause 389* corresponds to section 569 of the Act prescribes the manner in which the various statements are to be authenticated before filing with Registrar.

*Clause 390* corresponds to section 570 of the Act provides for power of Registrar to require evidence as to the nature of company.

*Clause 391* corresponds to section 571 of the Act provides for sending notice to customers on registration of banking company with limited liability.

*Clause 392* corresponds to section 572 of the Act empowering the Central Government to change the existing name of a company with an altered name if the existing name is considered by it to be undesirable.

*Clause 393* corresponds to section 573 of the Act provides for addition of words "limited" or "private limited" to the name whenever company registers in this part as a company with limited liability.

*Clause 394* corresponds to section 574 of the Act provides for conditions for issuance of certificate of registration of existing company by the Registrar.

*Clause 395* corresponds to section 575 of the Act provides for vesting of property on registration of company under this Part.

*Clause 396* corresponds to section 576 of the Act protects the existing rights and liabilities of the joint stock company under a contract after incorporation under this legislation.

*Clause 397* corresponds to section 577 of the Act provides protection for pending legal proceedings before incorporation of a company.

*Clause 398* corresponds to section 578 of the Act provides for effect of registration of a company.

*Clause 399* corresponds to section 579 of the Act provides for substitution of Memorandum and Articles of Association for deed of settlement after incorporation of company.

*Clause 400* corresponds to section 580 of the Act provides for power of Court to stay or restrain certain proceedings.

*Clause 401* corresponds to section 581 of the Act provides for stay of suit or legal proceedings against the company against whom an order has been made by a Court for winding up.

*Clause 402* is a provision empowering Central Government to appoint Director General of Inspection and Investigation.

*Clause 403* corresponds to section 609 of the Act provides for power of the Central Government to open registration offices at such places as it thinks fit.

*Clause 404* is a provision empowering Central Government to appoint Regional Directors.

*Clause 405* — This provides for powers and functions of Departmental officers.

*Clause 406* provides for empowering Central Government to appoint licensed Registrars to perform the such functions as prescribed in the proposed clause.

*Clause 407* corresponds to sections 610 and 610A of the Act provides for inspection, production and evidence of documents kept by Registrar and admissibility of microfilms, etc., as evidence.

*Clause 408* corresponds to section 614 of the Act provides for enforcement of duty of company to make returns, etc., to Registrar.

*Clause 409* corresponds to section 611 of the Act provides for fees to be paid by the companies to the Registrar in respect of several matters mentioned under this Act.

*Clause 410* corresponds to section 612 of the Act provides that fees, etc., paid to Registrar and other officers to be accounted for to the Central Government with the proposed modification by which instead of paying the fees into the public account in Reserve Bank of India, it has now been allowed to pay into public account of India in such manner as may be prescribed.

*Clause 411* corresponds to section 614A of the Act provides for powers of Court trying offences under this Act to direct filing of documents with Registrar.

*Clause 412* corresponds to section 233A and new provisions empowering the Central Government to order special audit, cost audit and secretarial audit, etc.

*Clause 413* — This clause empowers Central Government to call for information from any office or Department of any Government or organisations whether under the control of the Government or otherwise including banks and financial institutions.

*Clause 414* — This clause empower the Central Government to establish a fund to be called the Investor Education and Protection Fund which shall be credited the such amounts as prescribed in the proposed clause.

*Clause 415* — This clause empowers the Central Government by notification to constitute an Advisory Committee to be called National Advisory Committee on Accounting Standard which will advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

*Clause 416* corresponds to section 10E of the Act empowers the Central Government by notification to constitute a Tribunal to be known as Tribunal to exercise and discharge such original and appellate powers and functions as are conferred upon the Tribunal by or under this Act or under any other law.

*Clause 417* — This clause provides for powers of the Tribunal which may be exercised by Benches constituted by the President out of which one shall be a judicial Member and another shall be a technical Member. The President shall have the power to constitute a Special Bench consisting of three or more Members.



*Clause 418* — This clause empowers every Bench constituted to exercise the powers of a Civil Court while trying a suit, under the Code of Civil Procedure, 1908 in respect of certain matters as prescribed in the clause. This clause is more or less reproduction of sub-sections (4c), (4d), (5) and (6) of section 10E of the Act.

*Clause 419* — This clause provides that Tribunal to pass such order after hearing both the parties and it may at any time within two years from the date of the order with a view to rectifying any mistake; amend any order passed by it.

*Clause 420* corresponds to section 10F of the Act provides that any person aggrieved by any decision or order of the Tribunal may file an appeal.

*Clause 421* — This clause empowers Company Law Tribunal to review its own orders.

*Clause 422* — This clause provides that the Tribunal have the same jurisdiction, powers and authority in respect of its own contempt as the High Court has and may exercise for this purpose the provisions of Contempt of Courts Act, 1971 with certain modifications as may be prescribed in this clause

*Clause 423* — This clause provides power to Tribunal to hear all matters arising under the Act, for its determination shall be decided only by the Tribunal and not by any Court, Tribunal or other authority.

*Clause 424* corresponds to section 615 of the Act provides for powers of Central Government to direct companies to furnish information or statistics.

*Clause 425* corresponds to section 616 of the Act and provides for application of the Act to insurance, banking, electricity supply and other companies governed by special Acts.

*Clause 426* corresponds to section 619 of the Act provides for application of clauses 180 to 183 to Government companies in the matter of appointment of auditor.

*Clause 427* corresponds to section 619A of the Act provides for laying of the Annual Report of Government companies in the Houses of Parliament or State Legislature as the case may be.

*Clause 428* corresponds to section 619B of the Act provides for application of clause 426 of the Bill to apply to certain companies.

*Clause 429* corresponds to section 620A of the Act provides for powers of the Central Government to modify the Act in relation to class of companies or any other company as prescribed in this clause.

*Clause 430* corresponds to section 621 of the Act provides for offences against Act to be cognizable only on complaint by Registrar, shareholder and person authorised by Central Government or Securities and Exchange Board of India.

*Clause 431* corresponds to section 621A of the Act provides for composition of certain offences by Director General, Regional Director and where prosecution has been instituted the offence shall be compounded with the permission of the Court.

*Clause 432* corresponds to sections 622, 623 and 624 of the Act provides for jurisdiction to try offences under this Act and for certain offences being triable summarily in metropolitan areas.

*Clause 433* — This clause provides for powers of Central Government to appoint Company Prosecutors for conducting prosecutions arising out of this Act and such prosecutors will have powers and privileges conferred by the Code of Criminal Procedure, 1973 on public Prosecutors appointed by State Governments.

*Clause 434* corresponds to section 625 of the Act provides for payment of compensation in case of frivolous and vexatious prosecution.

*Clause 435* corresponds to section 627 of the Act provides for production and inspection of books where offences is suspected.

*Clause 436* corresponds to section 628 of the Act provides for penalty for false statements.

*Clause 437* corresponds to section 629 of the Act provides for penalty for false evidence.

*Clause 438* corresponds to section 629A of the Act provides for penalty where specific penalty is not provided elsewhere in the Act.

*Clause 439* corresponds to section 630 of the Act provides for penalty for wrongful withholding of property.

*Clause 440* corresponds to section 631 of the Act provides for penalty for improper use of words 'Limited' and 'private limited'.

*Clause 441* corresponds to section 632 of the Act provides for powers to any Court to require limited company to give security for cost.

*Clause 442* corresponds to section 633 of the Act provides for power to grant relief in certain cases, with the proposed modification by which power to grant relief have been also conferred on Regional Director in addition to Tribunal and Court.

*Clause 443* corresponds to section 634A of the Act provides for enforcement of orders of Court and Tribunal.

*Clause 444* corresponds to section 635A of the Act provides for protection of acts of the Government and any officer done in good faith in pursuance of this Act.

*Clause 445* corresponds to section 635AA of the Act provides regarding non-disclosure of information in certain cases.

*Clause 446* corresponds to section 635B of the Act provides for protection of employees during investigation by Inspector or pendency or proceedings before Court in certain cases.

*Clause 447* corresponds to section 637A of the Act and provides for powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.

*Clause 448* corresponds to section 637B of the Act and provides for condonation of delays in certain cases.

*Clause 449* corresponds to section 639 of the Act provides for laying of Annual Report on the working and administration of this Act before both Houses of Parliament.

*Clause 450* corresponds to section 641 of the Act provides for power of Central Government by notification to after schedules.

*Clause 451* corresponds to section 642 of the Act provides for power of Central Government by notification to make rules.

*Clause 452* corresponds to section 643 of the Act provides for powers of Supreme Court to make rules.

*Clause 453* corresponds to section 644 of the Act provides for repeal of Companies Act, 1956 and registration of Companies Act Sikkim, 1961.

*Clause 454* corresponds to section 645 of the Act provides for saving of orders, rules, etc., in force at the commencement of the proposed legislation.

*Clause 455* corresponds to section 647 of the Act provides regarding savings of proceedings of winding up before commencement of the proposed legislation.

*Clause 456* corresponds to sections 649, 651, 652, 654, 655 and 656 of the Act provides regarding construction of references to former enactments in documents, appointment made under previous laws will have effect made under this Act, continuation of former registration officers, registers under previous Companies Laws will be deemed to be part of registers under proposed legislation, funds and accounts kept under the proposed legislation shall be deemed to be in continuation of the corresponding funds and accounts kept under previous Companies Laws and proposes saving of incorporation under the repealed Acts.

*Clause 457* corresponds to section 657 of the Act proposes saving of certain provisions of, and rules under previous Companies Laws.

*Clause 458* corresponds to section 658 of the Act provides for that section 6 of the General Clauses Act, 1897 (10 of 1997), to apply in addition to sections 454 to 457 of the Act.

## FINANCIAL MEMORANDUM

Clause 402 of the Bill empowers the Central Government to appoint a Director General of Inspection and Investigation who shall be responsible for the conduct of all inspections and investigations under the Act, shall exercise such supervision and control over all the inspections and investigations made under this Act and to perform such functions and discharge such duties as may be given to him by the Central Government. The creation of the post of Director General Inspection and Investigation along with personal staff will involve additional expenditure of approximately Rs. 5.00 lakhs in a financial year.

2. Clause 414 provides for establishment of Investor Education and Protection Fund for promotion of investor awareness and protection. The Fund will be created by transfer of unclaimed/unpaid dividends, unclaimed fixed deposits/debentures and interest accrued thereon from companies. To carry out the objectives of the Fund, the Central Government shall specify an Authority or Committee with such members, as the Central Government may appoint, to administer the Fund. This does not involve any fresh expenditure.

3. Clause 415 of the Bill provides for constitution of National Advisory Committee on Accounting Standards to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies. The non-officials members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank. The annual recurring expenditure on account of organising meetings of the Committee would be approximately Rs. 1 lakh.

4. Clause 403 of the Bill empowers the Central Government to set up registration offices, to appoint Registrars, Additional Registrars and Assistant Registrars and to fix their salaries. Clause 297 (1)(c) empowers the Central Government to appoint its wholetime or part time officers as Company Liquidators. Clauses 403 and 297(1)(c) are merely continuation of the provisions of sections 609 and 448 of the existing Act and do not involve any fresh expenditure.

5. Clause 416 of the Bill provides for the constitution of the Company Law Tribunal in place of existing Company Law Board. The Company Law Tribunal is vested with wider jurisdiction, power of civil court while trying a suit, power to review etc., power to punish for contempt, etc. Sub-clause (2) of clause 416 envisages that the Tribunal shall consist of President, Vice-President and such number of judicial and technical members, as the Central Government deems fit. The existing Company Law Board will get converted into the Company Law Tribunal and will not involve any fresh expenditure.

6. Clauses 192, 204, 232 and 412 of the Bill empower the Central Government to appoint Inspectors to investigate the affairs of companies as also to investigate the beneficial ownership of shares and conduct special audit. Clause 198 of the Bill empowers the Central Government to prosecute the offenders arising out of the report of the investigation. The expenses on investigation, under certain circumstances are to be initially defrayed by the Central Government out of the moneys provided by the Parliament and are ultimately recoverable from the persons concerned. No accurate estimate of the annual recurring expenditure involved by these provisions of the Bill is possible, but it is expected that such an expenditure will be approximately rupees 2 lakhs a year. Clause 164 of the Bill empowers the Registrars of Companies and the officers authorised by the Central Government to inspect the books of account of companies. Clause 433 of the Bill empowers the Central Government to appoint Company Prosecutors for the conduct of prosecutions arising out of the proposed legislation. These clauses merely continue the existing provisions of the Act with consequential amendments and do not involve any fresh expenditure. The annual recurring expenditure on account of maintenance of these offices would be approximately rupees 20 crores.

7. The total expenditure for the administration of the provisions of this Bill, thus, works out to approximately rupees 20.06 crores annually as recurring expenditure.

8. The Bill will not involve any other expenditure of recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (1) and (2) of Clause 2 of the Bill provides for prescribing salient features of abridged prospectus and accounting standards respectively.

Sub-clause (2) of Clause 19 provides for prescribing fees to send copies of Memorandum, Articles and every other agreements and resolutions to a member of company who makes request for supply of such copies.

Sub-clause (1) of Clause 25 provides other means of serving document on the company or officer or its officer other than by post under certificate of posting or by registered post.

Clause 29 provides for guidelines for companies incorporated outside India.

Clause 31 provides the time and particulars of alterations to be included in a return to be delivered by a foreign company to the Registrar.

Sub-clause (b) of sub-clause (3) of Clause 38 provides rules subject to adaptations in Section 130 as are applicable to a foreign company.

Clause 38 provides the fees payable by foreign companies for registration of documents with Registrar of Companies.

Sub-clause (iii) of clause (a) of Clause 40 provides the manner of certification of the translated copy of instrument, enactment or provision in English, if the original document is not in English.

Clause (c) of sub-Clause (4) of Clause 40 provides that the statement with respect to matters relating to accounts of a foreign company to be included in a prospectus.

Sub-clause (2) of Clause 42 provides for the manner of certification of the translated copy of contract by a foreign company.

Clause 43 provides rules applicable for offer of Indian Depository Receipt by foreign companies in India.

Sub-clause (2) of Clause 48 provides matters to be stated and reports to be set out in the prospectus of a company.

Sub-clause (7) of Clause 48 provides matters to be included in a prospectus of a company.

Sub-clause (1) of Clause 50 provides for documents to be attached to a prospectus.

Sub-clause (3) of Clause 51 provides the time within which the information memorandum is required to be filed.

Sub-clause (7) of Clause 62 provides the rate of interest payable by directors, if the money received by the company is not refunded within 8 days of the expiry of the due date.

Sub-clause (4) or sub-clause (5) Clause 63 provides that the rate of interest payable by directors, if the amount application money is not repaid within 8 days of the due date.

Sub-clause (1) of Clause 66 provides that the manner of verification of copies of contract.

Sub-clause (2) of Clause 66 provides the particulars of contract to be filed with the Registrar.

Sub-clause (1) of Clause 67 provides upper limit of percentage of commission for procuring subscription for any securities of the company.

Sub-clause (5) of Clause 69 provides for declaration of solvency to be signed by directors before company buy back shares issued by it.

Sub-clause (8) of Clause 69 provides for particulars for registers to be maintained.

Clause (b) of sub-clause (1) of Clause 74 provides for particulars which a notice should contain.

Sub-clause (c) of sub-clause (7) of Clause 74 provides the conditions for Employees Stock Option.

Sub-clause (5) of Clause 75 provides for manner of nomination, variation or cancellation of nomination and manner of entitlement of nominee to security in the event of death of a shareholder.

Sub-clause (ii) of Clause (a) of Clause 78 provides for the rules and conditions relating to the equity share capital with differential voting rights, dividend rights or other rights.

Sub-clause (11) of Clause 97 provides for fee to be accompany with an application or appeal filed with Tribunal.

Sub-clause (1) of Clause 103 provides for form and the time frame for the execution of trust deed in respect of debenture issued by a company.

Sub-clause (1) of Clause 106 provides for fee payable by a person for obtaining the copy of the debenture trust deed.

Sub-clause (b) of Clause (4) of Clause 112 provides for manner of advertisement which includes a statement showing the financial position of a company.

Sub-clause (12) of Clause 112 provides for categories of deposits whose amount are not to be included in computing the amount of deposits.

Sub-clause (1) of Clause 113 provides for particulars of charge, the evidence of such charge created and the manner in which a copy of such documents shall verified, the time prescribed for their filing and the fee to accompany them for filing with the Registrar.

Sub-clause (4) of Clause 113 provides for manner of creating charge and the manner in which instrument creating charge shall accompany the form to be filed with the Registrar.

Sub-clause (1) of Clause 115 provides for the manner of verification of a copy of deed accompany the charge is to be verified.

Sub-clause (6) of Clause 116 provides for fee payable on inspection of register.







Sub-clause (7) Clause 116 provides for form of maintaining chronological index of charges.

Sub-clause (1) of Clause 119 provides fees payable to Registrar for registering charges filed by company.

Sub-clause (1) of Clause 120 provides the form for memorandum of satisfaction of the charge and the fee to accompany it and the time frame within which satisfaction of charge should be filed.

Sub-clause (5) of Clause 124 provides for fee payable for inspection of register of charges maintained at the registered office of the company.

Sub-clause (10) of Clause 128 provides for safeguards for keeping of particulars of members or debenture holders of a company in the form of computer floppy or diskette.

Sub-clause (1) of Clause 130 provides for the form of filing annual return.

Sub-clause (1) of Clause 131 provides for form of declaration to be filed with Registrar.

Sub-clause (2) of Clause 132 provides rules for preservation of register, etc.

Sub-clause (3) of Clause 132 provides for fee to be paid by public for instruction of register of members or debenture holders of a company.

Sub-clause (2) of Clause 135 provides for adaptations and modifications of Clause 136 to 144.

Sub-clause (4) of Clause 141 provides for the time frame for instrument appointing a proxy.

Sub-clause (7) of Clause 141 provides for form of instrument for appointing proxy.

Sub-clause (3) of Clause 152 provides for time within which minutes kept on loose leafs are to be got bound.

Sub-clause (2) of Clause 153 provides for fee for obtaining copy of minutes of the general meeting by a member.

Sub-clause (2) of Clause 155 provides for fee higher than that prescribe to the directors.

Sub-clause (4) of Clause 160 provides for percentage of profit to be transferred to reserves before declaration of dividend by a company.

Sub-clause (5) of Clause 161 provides form of statement to accompany the amount of unpaid dividend transferred to the Central Government.

Sub-Section (1) of Section 163 provides for particulars of material, labour or other items of cost to be maintained in the books of accounts of a company.

Sub-clause (2) of Clause 168 provides for form of consolidated accounts to be prepared by a company having subsidiary companies.

Sub-clause (1) of Clause 173 provides for stating the particulars of conservation of energy, technology absorption, foreign exchange earnings and outgo in the report of

Board of Directors.

Sub-clause (f) of Clause (1) of Clause 173 provides for measures taken to be disclosed in the report of the Board.

Clauses (b) & (c) of sub-clause (4) of Clause 173 provides particulars of remuneration paid to managing or wholetime directors or managers in the Board report.

Sub-clause (1) Clause 179 provides for form of financial statement to be displayed by banking and insurance companies to be displayed at their premises.

Sub-clause (4) of Clause 189 provides for form of auditors report.

Sub-clause (5) of Clause 191 provides for guidelines for the purpose of exercise of power of seizure of documents by a Government officer.

Sub-clause (5) of Clause 196 provides for guidelines for the purpose of exercise of power of seizure of documents by a Government officer.

Sub-clause (1) (i) and sub-clause (2)(i) of Clause 197 provides for fee for obtaining a copy of the report by any person.

Clause 202 provides for the manner in which a copy of the investigation report of an inspector under clause 192 or 193.

Sub-clause (1) of Clause 220 provides appointment of a managing or wholetime director in a company with paid up capital as prescribed.

Sub-clause (2) of Clause 220 provides for particulars of appointment to be filed with intimation of appointment of managing director.

Sub-clause (1) of Clause 232 provides for form of disclosure of interest of sole-selling agents of a company in the Board's report.

Sub-clause (1) of Clause 233 provides for conditions for grant of loans by a company to managing or wholetime director of the company.

Sub-clause (2) of Clause 238 provides for form of return of particulars of managing director, Chief Accounts Officer or manager or secretary with Registrar of Companies.

Sub-clause (4) of Clause 238 provides for fees payable by members for inspection of directors etc.

Sub-clause (5) of Clause 256 provides for form and conditions under which certificate is to be attached with the Board of Directors.

Sub-clause (1) of Clause 268 provides for manner in which notice has to be given to a member dissenting from these scheme.

Sub-clause (5) of Clause 268 provides for information to be provided in offer or circular recommending a scheme to members.

Sub-clause (2) of Clause 269 provides for rules for determining price for acquiring shares of minority shareholders.

Sub-clause (6) of Clause 272 provides for form of consent for applying to seek relief from operation.

Sub-clause (3) of Clause 297 provides for terms and conditions, remuneration, etc. for appointment of Official Liquidator.

Sub-clause (4) of Clause 302, sub-clause (1) of Clause 310, Clause 313 provide for forms to be used for various purposes by Official Liquidators.

Sub-clause (2) of Clause 314, sub-clause (1) of Clause 337, sub-clause (1) of Clause 346, sub-clause (1) of Clause 351, sub-clause (3) of clause 357 provide for various forms used for various meetings, statements of accounts, etc. to be laid at such meetings, etc. by the voluntary liquidator in creditors and members winding up.

Sub-clause (6) of Clause 357, sub-clause (3) of Clause 176 and Clause 377(1) provide for forms used in voluntary liquidation for filing information/returns to Registrar.

Clause 401, sub-clause (1) of Clause 407, sub-clause (1) and (2) of Clause 409 provide for forms and procedure for filing returns and documents together with fee with Registrar.

Sub-clause (3) and (4) of Clause 414 provides for form of accounts and other relevant records and manner of utilisation of funds by the Investor Education & Protection Fund.

Sub-section (3), (4) and (7) of Clause 416 provides for qualifications, terms and conditions, etc. of service of President, Vice-President and Member of the Tribunal.

Sub-clause (5) of Clause 424 provides for the procedure for conducting investigation in case of refusal to furnish or furnishing incorrect information to the Central Government.

Sub-clause (b) of Clause (1) of Clause 452 provides for power to make rules consistent with Code of Civil Procedure by the Supreme Court of India.

(3) Any rules made under sub-clause (1) of Clause 451 may provide for contravention thereof will be punishable with a fine which may extend to five thousand rupees and also a further fine which may extend to two hundred rupees for every day after the first during which such default continues.

(4) Every rules made by the Central Government under sub-clause (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

S. S. SOHONI,  
*Secretary-General.*

